THE DECLAMATIONS
OF CALPURNIUS FLACCUS

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THE DECLAMATIONS OF
CALPURNIUS FLACCUS

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TEXT, TRANSLATION, AND COMMENTARY

BY

LEWIS A. SUSSMAN

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INTRODUCTION

Background

As the mainstay of the Roman higher educational system from before Cicero to the very end of the Empire, the composition and delivery of practice speeches (declamations) had an enormous effect on the style and content of Latin literature, and, through it, on its European successors. Fortunately, specimens have survived in full or in extracts which provide us with a fairly accurate idea of the form these speeches took in the Early Empire. The declamations of Calpurnius Flaccus form one such work, consisting of short excerpts from 53 of these exercises. Despite its inherent interest and value to scholars of Roman literature, Latin stylistics, and the development of rhetoric, this collection has been relatively ignored by classical scholarship. A reliable text appeared only as recently as 1978.[1] The most recent commentary, while admirable for its time, dates to 1720.[2] The *Excerpta* have never been translated. The only work to focus exclusively on the problems of authorship, style, date, and content of Calpurnius Flaccus is Weber's short dissertation.[3] Symptomatic of the neglect of this work is the absence of any review of Håkanson's text.[4] In fact there is no standard system of referring to the work, except by citation of the declamation number, which proves to be rather cumbersome and time consuming in the case of the longer pieces.[5]

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[1] Lennart Håkanson's excellent Teubner (Stuttgart 1978), which has supplanted Georg Lehnert's flawed edition in that same series (Leipzig 1903), on which see Meister and H.'s numerous remarks in his *apparatus criticus*. For citation methodology see the section on Abbreviations and References.

[2] Burman's (Leiden 1720), which also contains texts of and notes to the *Major Declamations* and the *Minor Declamations* attributed to Quintilian. His commentary also includes the valuable and perceptive notes of other scholars such as Gronovius and Schulting who preceded him in studying these works.

[3] Hans Weber, *Quaestiones Calpurnianae ad explorandam elocutionem et aetatem Calpurnii Flacci rhetoris collatae* (Donauwörth 1898[apparently]), the published form of his 1893 inaugural disseration at the University of Munich. While very useful (though short; 26 pp), its value is diminished by the fact that he had no modern text to work with; his numbering of the declamations reflects Burman's, although he recognizes (cf. 13, 19, 22, 46) the two declamations discovered by Schwab in the Codex Chigianus MS and announced in *Arch. f. lat. lex.* 9 (1896) 547ff.

[4] The entire corpus of works concerning declamation has been relatively overlooked by scholars, although this has been changing since the mid 1970's. See the remarks of W. (1984) VII, regarding the *Minor Declamations*; Sussman (1987) i & n. 5 (p. 241), regarding the *Major Declamations*.

[5] Because of the need to identify references accurately in this book, I have cited by

The reasons for preparing this text, translation, and commentary should therefore be obvious. I hope to make this work more accessible to classical scholars and thereby win it more readers. Those with serious interests in Latin literary style, the history of education, Roman law, and rhetoric will find much in Calpurnius of value. For this reason I have tried to provide useful parallels from other Roman declamation collections and Latin literature, along with observations concerning the laws and situations of the cases and references to pertinent secondary literature. A special focus has been textual questions, since these have received virtually no attention from scholars. While Håkanson's edition is excellent and authoritative, I have disagreed with him on numerous occasions. These divergences are explained in the commentary, as are the many instances where I can support a reading or conjecture of his with additional evidence. Then, too, the casual reader will find the reading hard going at times, since the text consists of extracts taken from various parts of speeches on each given theme. Thus there is often no cohesion or context (and indeed the MSS themselves provide no help in identifying where one extract ends and a new one begins [6]). The commentary will therefore often deal with contextual matters and especially the relationship between a sentence and the rest of the declamation and its argument. Also, a considerable amount of attention focuses on matters of style, especially the use of devices which so typify declamation, and which will help to explain why the excerptor included these specimens. Through appreciation of these qualities, readers will come away with a better understanding of the interplay between declamatory and literary style.

In addition, social historians, who have so far, with few exceptions, ignored the declamations as evidence, may be encouraged to mine this rich lode, of course with all due caution.[7] To cite but a few examples: what does the large number of themes regarding the conflict between poor men (generally portrayed sympathetically) and rich men tell us about social tensions of the time? What does the declamation

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declamation number, usually supplemented by Håkanson's page and line numbers. Thus the expression *miserum me*, which occurs in the fifteenth declamation on p. 15, line 23 of H.'s edition, will be cited as Calp. 15 (H. 15.23). (The PHI CD ROM 1991 also uses H.'s edition with some changes necessitated by its own particular format for references.) My Latin text is therefore also keyed to H., in part to facilitate reference to his *app. crit.*

[6] H. renders a great service by marking what appear to be the beginnings of new extracts by capitalizing the first letter; cf. H. (1978) XIV. I have followed his example and, to provide more emphasis, have italicized the initial word of a new extract in both the Latin and the English. I generally have found myself in agreement with H.; differences are noted in the commentary.

[7] Cf. my remarks (1987) vi & n. 25 (p. 243).

concerning a Roman matron who gave birth to a black child tell us about racial prejudice in the period (Calp. 2)? How are women portrayed in these exercises in their various roles as mothers, sisters, wives, daughters, daughters-in-law, whores, mistresses, and particularly their frequent appearances as the victims of rape? How do we interpret the great concern with failed marriages, as witnessed by the many cases regarding divorce, adultery, and interfamilial murder? What of the notable tensions between fathers and the sons whom they so often disown? How about the treatment of slaves, freedmen, and non-citizens? What do these exercises tell us of the relative status of the various professions, such as medicine, advocacy, politics, the military, and serving as a gladiator?

Declamation and Education

After a preliminary education in the basics of reading, writing, and then study and explication of basic literary texts under a *grammaticus*, a young Roman male by then in his early teens progressed to the school of the *rhetor*, a professional rhetorician. There he listened to lectures on rhetorical theory, heard the delivery of specimen speeches by his professor, and then gained practical experience by both composing and delivering speeches on assigned themes.[8] These declamations, as the practice speeches were known, consisted of *suasoriae*, deliberative speeches of advice to legendary or historical figures, and *controversiae*, speeches of defense or prosecution in fictitious court cases. The latter were more difficult and engaged the advanced students. A typical assignment would resemble the theme section of a case in Calp.; i.e., one or several laws, followed by a given situation in which they were supposedly violated. Keeping in mind both matters of argumentation (covered by the teacher in formal lectures, especially with regard to *status* theory) and style, the students were asked to compose a speech for one side or the other. After revision under close scrutiny of the teacher, the student would then deliver the full speech before the class, or on special occasions, with the doors of school thrown open, to members of the general public (undoubtedly to advertise the *rhetor*'s excellence as an instructor, since the schools were by and large private operations).

Moderns will think this a rather bizarre system of higher education, with its narrow focus on argumentation and literary expression, to the near exclusion of such subjects as history (except insofar as it was a helpful repository of *exempla* for speakers), literature, and the sci-

[8] For extended discussion of the system see esp. Bonner (1977) 250-333; also his bibliography 388-391; cf. Gwynn and Parks passim.

ences. Nevertheless, given the Roman legal system and the necessity for upper class men to appear in court on a fairly regular basis (and also to speak before the senate and other public bodies), there was a strong utilitarian value to be derived from it.[9] Then, also, it produced men who were excellent writers, could argue logically, think quickly (some of the regimen included practice in extemporaneous speaking), and speak eloquently when the occasion demanded. Thus the graduates of this system who went on to careers in public service (such as Pliny and Tacitus) or even in the applied sciences (such as Vitruvius) display consummate stylistic skills. This is not to say that the Romans themselves never criticized this system; they did indeed, and there was a vigorous public debate over the bad effects of such training on literary style and the practice of real oratory, especially in the first century AD. Among those who found fault with the system were the elder Seneca, Petronius, and Tacitus; even Quintilian, the Regius Professor of rhetoric, admitted some of its faults.

Despite its harsh critics, the system was never seriously challenged, and indeed continued on after the fall of Rome in altered form through the Medieval period and only died out in various parts of Europe in the early nineteenth century.

Adult Declamation

More strange than the persistence of declamation in the schools was its intense popularity among adults, especially in the Early Empire. From Cicero on down, prominent public men even in their later years continued composing and delivering *controversiae* for practice (often extemporaneously) or as a form of recreation and intellectual stimulation. While these presentations were usually private or before a closed circle of friends, on many occasions (as recorded by the elder Seneca) there were public performances before large audiences where several speakers would declaim both sides of a given case. These were very popular and attended by leading political and literary figures (e.g., Augustus, Maecenas, and Asinius Pollio). Audiences delighted in these sessions and displayed their enthusiasm with frequent applause or sounds of derision. There also seems to have been some very perceptive criticism after the performances were over, judging from the statements preserved by the elder Seneca.

A special feature of style, the delivery of pithy, brilliant, and clever epigrammatic statements (*sententiae*), especially found favor among

[9] The point is well made in Parks; see also H. (1986) 2300-2301, and his noteworthy quotations of Caplan & Clark (nn. 87, 88).

audiences. The style was frequently highly artificial and even bombastic in the effort to be ingenious and outdo a previous speaker. This characteristic style and emphasis on effect (often at the expense of meaning and sense) helped to shape the Latin literary style of the Empire. Thus the study of these exercises, their style, and the preoccupation with *sententiae* are vital for understanding and appreciating such authors as Ovid, Seneca, Petronius, Lucan, Juvenal, and especially Tacitus.

The Surviving Declamations

Four collections of Roman declamations have survived; they vary quite markedly in format. From the elder Seneca (*ca.* 55 BC–37 AD), the father of the essayist, philosopher, and politician, we have ten books of *controversiae* in full or condensed form. Each book was introduced by a general preface addressed to his sons which discussed matters relating to the history of declamation and the famous speakers whom he had known. Following each preface is a series of *controversiae* themes, after which Seneca reproduces extracts from various declaimers on the given theme, generously sprinkled with his own critical comments and those of others, relieved here and there by lively anecdotes and reminiscences. The extracts as such were classified under the headings of *sententiae, divisiones* (outlines of argumentation), and *colores* (ingenious exculpatory pleas). A single fragmentary book of *suasoriae* containing extracts from seven of these exercises also survives. Seneca was not a professional *rhetor,* and in his old age gathered this collection (ostensibly) at the behest of his sons, already then grown men. His comments are by and large sensible, non-technical, and enlivened by the insertion of many anecdotes sometimes only tangentially relevant, which are nevertheless engaging and entertaining. His overall aim was to provide examples of expression for his sons to avoid or emulate (*C.* 1 pr. 6). We may compare the didactic purpose of this methodology with the collections of Sopater and Choricius of Gaza in the Greek declamatory tradition.[10]

The *Declamationes Minores,* or *Minor Declamations,* preserve the last 145 themes of a work which originally contained 388. Each exercise has a title, a theme statement (including an explicit or implicit statement of the law or laws involved), and then extracts from speeches varying greatly in size. These selections are sometimes introduced or interspersed with *sermones,* addresses of advice by a professional *rhetor,* providing hints and instruction on how to deal with the theme at hand.

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[10] See W. (1984) XI.

The MSS attribute the work to Quintilian and it would appear that it was composed at about the same time by someone, who if not Quintilian himself, was very familiar with him and agreed substantially with his ideas.[11]

The only specimens of full *controversiae* occur in the *Declamationes Maiores*, or the *Major Declamations*, a collection of 19 speeches devoid of any critical comment which, again, are attributed in the MSS to Quintilian.[12] These are undoubtedly the works of several professional teachers of rhetoric, almost certainly not including Quintilian himself, and datable to well into the second century AD and perhaps well beyond.

By far the smallest of the Roman declamation collections are the *Excerpta* of Calpurnius Flaccus. The work contains no commentary of another party (as in Seneca and the *Minor Declamations*) and, of course, it does not preserve full speeches as we find in the *Major Declamations*, but rather only gives brief samples of *sententiae* from the different themes selected.

As they have come down to us, the declamation extracts in this collection come under the heading of 53 separate cases filling close to 40 Teubner pages. Each case generally consists of an abbreviated title, the statement of a law, a situation to which that law applies, and then extracts from speeches on one side of the case, followed in Calp. 1-9 only by statements from the opposing side (*pars altera*). They range in total size from 37 Teubner lines (Calp. 4, or about one and two-thirds pp.) to a very brief five or six lines (Calp. 41 & 46), with the average being somewhat less than a page.

Author and Date

The manuscript tradition unanimously ascribes this collection to a Calpurnius Flaccus. Unfortunately it provides no *praenomen* or any other evidence regarding his identity or date, except for strong indications in the text itself, as we shall see, that the style would appear to date after *ca.* 100 AD. Weber, following Borghesi, identifies our author as M. Calpurnius, the *consul suffectus* of 96 AD.[13] However, this association rests on a rather arbitrary assignation of the name Flaccus to this personage.[14] There is also a Calpurnius Flaccus who appears as

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[11] See W. (1984) XIV-XVII.

[12] See in general on this collection Sussman (1987) ii-x.

[13] Weber 17, 20. See Sherwin-White n. *ad* Plin. Ep. 5.2 (p. 316), citing *CIL* xvi. 40 *FO*.

[14] See Brzoska 1372; Schanz 153-154; L. *JAW* (1902) 112.

the recipient of a letter from Pliny (*Ep.* 5.2), a man of some literary taste, whom some take to be the same as M. Calpurnius, and who, whether we identify him with this gentleman or not, may also be a possible candidate for authorship.[15] The lack of any reliable evidence precludes a definite identification here, but it is tempting to believe that, given his educated sensibilities and friendship with Pliny, he was also a student of Quintilian and therefore interested in declamation and oratory. Thus he, or at any rate, a family member may well be a likely candidate.[16]

The name seems therefore fairly well fixed in the Imperial period of the late first and second centuries AD. General considerations of style and usage also point to this as the likely period for composition, perhaps even more specifically to the time of Hadrian and Antoninus Pius.[17] Weber attempts to solidify this impression in citing and examining several usages which he introduces as solid proof.

He first offers Calp. 2 (H. 2.7-8): *rutuli sunt Germaniae vultus et flava proceritas Hispaniae* (discussed more fully in my n. *ad loc.*). The use of the poetic word *rutilus* for hair color (and by extension, facial features) finds close parallels in Tacitus (*Ger.* 4.2; *Hist.* 4.61; and esp. in the extended sense, *Ag.* 11.2), but may be little more than a popular usage in the schools of the period and thereby inconclusive for exact dating.[18] So also may we classify Weber's discussion of the indeterminate use in Calp. of *infantes, filii, liberi,* and *fratres* to include children of both sexes; this too may reflect common use in the schools or the emergence of vulgar Latin characteristics in literary style.[19] The use of *impossibilia* in a manner similar to Quintilian to reflect techni-

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[15] Sherwin-White ibid. says he may be the cos. suff. of 96 AD; but there is no positive evidence; cf. *PIR*2 265, 268. Since Pliny's correspondent may have had Spanish origins (Sherwin-White cites *ILS* 6946, 7912), he may be associated with the Spanish connection of Pliny's uncle; see ibid. for full references; see also R. Syme, "People in Pliny," in E. Badian (ed.), *Ronald Syme: Roman Papers* (vol. 2, Oxford 1979) 713-714, who shows that the consul suffect of 96AD was not a Calpurnius Flaccus. For more on the many Calpurnii Flacci in this period, see below, n. 16. It is perhaps noteworthy that the declamation collections of the elder Seneca and Quintilian, both men of Spanish birth, are associated with Calpurnius Flaccus in the MS tradition, as discussed below.

[16] See Brzoska 1372; Schanz 154. We may also mention several other possibilities: Calpurnius Flaccus (P-W 35) cited in Pomp. *Dig.* 40.5.34.2; (P-W 38) cited in Paul. *Dig.* 37.9.8 (time of Hadrian); (P-W 39) cited in Ulp. *Dig.* 4.4.22 (time of Severus and Antoninus Pius); cf. Syme (above, n. 15) 712-713.

[17] Cf. Teuffel-Schwabe 821; Brzoska 1372; Weber 17-20; L. *JAW* 113 (1902) 110, 111, 112; Meister 233-234; Schanz 153-154.

[18] Weber 17-18; cf. 9; L. *JAW* 113 (1902) 110.

[19] Weber 18-19; see L. *JAW* 113 (1902) 110. The passages discussed are Calp. 12: *infantes*, a man's daughter and son by two different marriages, and *filios*, referring to

cal Greek rhetorical terminology serves only to to place the work again in the general period of the late first century AD at least.[20]

More useful for dating are two other passages which, while not determinative, at least would appear to provide us with a *terminus post quem* and a fairly solid basis for dating to the time of Pliny's *Pan.* In Calp. 26 a priest rhetorically asks where he may be executed: *hic, inter aras et altaria ubi publica vota suscepi . . . ?* (H. 25.15-16). An exact parallel occurs in Plin. *Pan.* 1.5.[21] But the connection to the latter work becomes intriguing in the light of an earlier passage in Calp. 6 (H. 6.17-18): *sceleratis ingeniis et plus quam civilia cupientibus non dominari instar servitutis est.* The line immediately calls to mind the famous opening of Lucan's *Bellum Civile: bella per Emathios plus quam civilia campos* and may well at least provide us with at least a *terminus post quem.*[22] But more crucial is the presence of *instar.* The word does not occur in the elder Seneca, Seneca, Quintilian, the *DMin,* or *MD,* but is extremely common in Pliny *Pan.* and also appears in Tacitus.[23] It would appear to have been a word uncommon in the schools, but favored by Pliny's circle, or at least during the time he was composing. Intriguing also is the unique collocation of the verbs *subremigo* and *velifico* in Calp. 20 (H. 19.13) which finds its sole parallel in Pliny's uncle (*Nat.* 9.88).[24] *Effusus* in its rare sense applying to body size (Calp. 2; H. 3.2) is parallelled in Stat. *Theb.* 6.841, as is *dies longus* in its unusual tenor of an extended time period (H. 3.2; cf. Stat. *Theb.* 1.638-639; Juv. 10.265).[25] More specifically useful for dating into the 2nd century AD is a rare use of *sub,* "subject to the risk of," in

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both (H. 12.7, 11). Calp. 26: indeterminate use of *liberi* instead of *filii* (H. 24.16; cf. *filios* H. 24.18; see also Calp. 38 [H. 31.20 *filiis*; cf. H. 32.5 *liberos*] & 53 [H. 40.3 *filios*; cf. H. 40.6 *liberis*]). Calp. 44: *fratres* for a brother and a sister (H. 35.3; cf. Tac. *Hist.* 4.65; 5.5; *Ann* 4.65 & my n. *ad loc.*).

[20] Weber 19, citing Calp. 45 (H. 35.14): *amplius reges impossibilia desiderant* (see my n. *ad loc.*); cf. L. *JAW* 113 (1902) 110.

[21] *non enim occulta potestate fatorum, sed ab Iove ipso coram ac palam electus repertus est; quippe inter aras et altaria....*; cf. Tac. *Ann.* 16.31; see my n. *ad loc.* and Weber 19-20 for other reminiscences; none are as close. Cf. L. *JAW* 113 (1902) 110 who views it as a technical phrase borrowed from official language.

[22] Weber 19; cf. my n. *ad loc.* Ovid's statement in *Met.* 12.583 is not as close: *exercet memores plus quam civiliter iras.* L. *JAW* 113 (1902) 110 identifies the general sentiment with the expression of the schools of rhetoric.

[23] Weber 19, 22 (see my n. *ad loc.*); Plin. *Pan.* 29.1; 37.4; 52.4; 81.1; cf. Tac. *Ann.* 1.20; 2.61; 3.36.

[24] See my n. *ad* Calp. 20 (H. 19.12-14); cf. Weber 21. And if we accept the reading of *deam* for *ream* in Calp. 52 (H. 39.23; cf. n. *ad loc.*) there are close parallels to *Fortuna* as a goddess, and attacking it as such in Juv. 10.365-366; 13.86 & Plin. *Nat.* 2.22.

[25] See my nn. *ad loc.* for further discussion.

Calp. 45 (H. 35.11 & n. *ad loc.*), reflected in Suetonius (*Tib.* 36; *Cal.* 48.2). Also closely parallelled in this author is the unusual phrase *alter incidit in adversam valetudinem* (Calp. 48; H. 36.20-37.1); cf. *ut vero in adversam valetudinem incidit* (Suet. *Cal.* 14.2). Further, the combination of *adversa* and *valetudo* is remarkably late Tacitean (*Ann.* 2.69 [twice]; 3.71; 12.66; 13.35).[26] There is a rare use of *deformis* as a neuter substantive in Calp. 2 (H. 2.13; cf. n. *ad loc.*): + *deformium voluptas* which is parallelled only, and in a strikingly similar context, in Tac. *Ann.* 14.15: . . . *deformia meditari.* We may also compare the rare coupling of *sapiens* and *cautus* of Calp. 18 (H. 18.14) with Tac. *Ag.* 27.2.[27] The use of *perpes* in Calp. 48 (H. 37.12) seems to be symptomatic of an archaizing tendency during the early Empire, but especially characteristic of the 2nd century AD; the word occurs frequently in Apuleius.[28] The tendency to adopt characteristics of vulgar Latin also is common in this period, and may account for the appearance of the phrase *in tempore suo;* the normal expression in classical Latin omits the preposition *in,* the use of which however is conventional in the Latin Vulgate.[29] We may similarly point out the occurrence of a *quod* clause plus the subjunctive after the verb *credo* to express indirect statement.[30]

Further evidence for dating may appear in the prominence of tyrants in the themes; such material would be avoided during the reign of Domitian and may point to composition after his death in 96 AD.[31] A further hint of a date may come from the close association in the MS tradition of the *DMin* with the works of Antonius Julianus, a *rhetor* known to Gellius (123–*ca.* 165 AD).[32]

[26] The thought also occurs in the mid 1st century; Curt. *Alex.* 3.7.1; 9.6.4; Sen. *Ep.* 66.38. See my n. *ad* Calp. 48 (H. 36.20-37.1).

[27] See my n. *ad loc.* The only other close parallel is Cic. *Att.* 14.14.2.

[28] See my n. *ad loc.*; cf. e.g., Apul. *Fl.* 17; *Soc.* 1; *Apol.* 73; *Met.* 9.11; also Weber 22.

[29] Calp. 39 (H. 32.12); see my n. *ad loc.* for full documentation.

[30] Calp. 36 (H. 31.4-5); see my n. *ad loc.* & OLD s.v. *quod* 5, which cites this passage.

[31] For the appearance of tyrants in Calp. see the listing in n. *ad* Calp. 1; for the use of this circumstance in dating the collection see Weber 26; L. *JAW* 113 (1902) 11. One may point to the virtual absence of tyrants in the themes of the *MD* (one occurs only incidentally in *MD* 16) as evidence that at the time of its much later compilation (see Sussman [1987] ix) the idea of a tyrannical emperor was not prominent in the minds of the declaimers as it may have been closer to the period after the death of Domitian, i.e., at about the time Tacitus was writing. The *DMin* collection does include material on tyrants (283, 287, 345, 374, 382), but this is not very much, considering its far larger corpus.

[32] Noted in W. (1984) XXI n. 10.

Style

Discussion of style requires caution since in Calp. we are dealing with a selection of *lumina,* sterling examples of *sententiae* chosen for their cleverness, sparkle, ingenuity, and striking appeal.[33] The excerpts are generally one or two sentences long, and picked from several declamations on the same theme (note the *pars altera* in the first first nine declamations) on the basis of these notable qualities. Thus there are no examples of extended prose on which we might base an appraisal of this author's normal expression. Our closest analogue to this methodology is the elder Seneca, but his selections from the various declaimers can be quite lengthy, and are concerned not just with *sententiae,* but also matters of argumentation as well. In any event, his samples are interspersed with critical commentary. In Calp. we have just the bare bones, but in any case what the excerptor felt was worthy of recording because of its sparkle.[34]

Sentences are relatively short, with a minimal amount of subordination, and are frequently marked by antithetical and parallel structure. Expression may take the varied forms of rhetorical questions, answers to imaginary objections, quotations placed in the mouths of opponents, direct addresses to the jury, oaths, and impassioned apostrophes (often with personification of abstract nouns). The prose is highly emotional, affected, laconic to the point of obscurity, choppy but pointed, eminently quotable (and sometimes even memorable), and eclectic in its standards of diction. Examples of archaism coexist with vulgar Latinisms; frequent reminiscences of Seneca appear with passages sharing the stylistic traits and color of Tacitus. A number of quite rare and unusual usages pepper the pages.[35] Especially striking is the large number of figures, freely used throughout, most notably

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[33] Weber's study of the style of Calpurnius Flaccus is still the most comprehensive though it leaves much to be desired. See for general discussion 8, 20-21; for specific analysis see 8-15 (in treating matters of textual emendation) and esp. 20-25 (dealing with rare and unusual usages); also Brzoska 1372; L. *JAW* (1902) 111-112; Meister 234; Schanz 153. The commentary will deal with individual aspects of style; the author plans a more comprehensive study of Calpurnius' style to follow. For other works dealing with declamatory style see the bibliographies of Sussman (1984) & H. (1986), esp. 2278-2281, 2290-2297). For the stylistic context consult A. D. Leeman, *Orationis Ratio* (Amsterdam 1963; repr. 1986), esp. Chaps. IX ("Orators and Rhetoricians in the Early Empire," pp. 219-242) & XII ("The Classicist Movement," pp. 287-310).

[34] Perhaps a student writing in his notebook, as Weber 8 suggests; cf. L. *JAW* (1902) 111. It could equally as well have been a later student, literary executor, or rhetorical scholar poring over the collected declamations in full form, as discussed below.

[35] Some of these are discussed in Weber 20-25 and also in the commentary when they appear.

anaphora, alliteration, apostrophe, asyndeton, chiasmus, irony, metaphor, personification, repetition of words (especially verbs) in the same or grammatically variant forms, word play, and zeugma.[36] Such usages form one aspect of the great debt of this declamatory style to poetry, and one that is characteristic of Silver Latin prose expression.[37] As one would expect, Ovid and then Vergil are the most prominent influences, followed by Horace and Roman comedy.[38]

Although this is difficult for a modern reader to appreciate, one must always bear in mind when reading this and the other declamation collections that they are first and foremost examples of oral expression delivered before a discriminating audience by well trained and highly experienced (if not professional) speakers. The Latin should really be read aloud with some attempt at recreating the vocal intonation and expression in order to appreciate fully such characteristics as the verbal cleverness of the style, the attention paid to sentence structure, but especially to word rhythm and sound patterns. One must also in many places attempt to impart a sense of the irony, sarcasm, and wit.

The general impression left by the style is that our author was literate and well read, conversant with the full panoply of rhetorical devices and tricks, a devoted student of the development of Latin style who was unafraid of experimentation in expression and in his choice of models for emulation. There is little doubt that his goal was to bedazzle his audience with clever tricks, unexpected turns, and mastery of rhetorical devices. And although he was deeply steeped in the declamatory and rhetorical traditions, he rarely descends to the excessive prolixity, bombast, and plain foolishness found in some of the declaimers quoted by the elder Seneca and in the *MD*. Nevertheless his terseness at times (combined with the excerpt format) and his irony can make the text difficult to understand.

Content

These declamations, even given the limited number of cases and abbreviated space devoted to each case, fully reproduce the variety and richness of the much larger collections. Among the topics covered in its brief 40 pages and 53 themes we find murder (by poison and other-

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[36] These are pointed out in the commentary, along with some other striking figures, such as isocolon, hendiadys, litotes, and oxymoron.

[37] Poetic style is notable in all the declamation collections; see H. (1986) 2295 & works there cited; Sussman (1987) iv.

[38] Statius and Lucan are discussed above. The apparent debt to Roman comedy may in part reflect the tendency of Calp. to reproduce vulgarisms and also the subject matter of some of the themes. Parallels to the poets are noted in the commentary.

wise), tyrannicide (and the rewards for it), parricide, suicide, infanticide, execution of children, torture, heroism (and its rewards), attempts to install tyranny, the demands (usually sexual) of tyrants, incest, rape (both homosexual and heterosexual), the legal options of raped women, illegitimate births, disputed birth, adoption, disinheritance, marriage, divorce, adultery and its punishment, maltreatment of wives, slavery, status of freedmen, debt slavery, sibling rivalry, acts of sacrilege, election campaigns, and bitter disputes between rich and poor. The women we meet are often unfavorably portrayed: scheming wives who attempt or succeed in killing husbands and children, vengeful divorced wives, adulteresses, nasty stepmothers, and prostitutes. Even some of the women who are innocent victims of rape, or bad treatment by their husbands, display a cruel, retributive nature. The young men are a fairly colorless lot, usually victims of circumstances beyond their control.[39] Often they are threatened with forced homosexual relationships or put into the difficult position of being disinherited, or hopelessly in love with an unresponsive woman. There are youngsters forced to face the terror of war who respond with heroism or, more frequently, cowardice; a few are wastrel libertines, or just boys having fun. Other male figures include wronged husbands and fathers, a lustful father-in-law, evil rich men who wage vendettas against their generally hapless poor enemies, a male prostitute, a pimp, doctors, lawyers, orators, politicians, generals, tyrants, a *paedagogus,* priests, war heroes (including one who was forced into becoming a gladiator), slaves, freedmen, a rich man reduced to debt slavery, non-citizens, and foolish and senile old men.

The themes in which these characters and situations appear are usually very similar or identical to the cases found in the elder Seneca, *DMin,* and *MD.*[40] Most of these involve courtroom cases and thus would be classified as *controversiae,* but this is not always the case. One case is conducted before General Marius' tribunal (Calp. 3; but this murder case is still essentially judicial). Several other kinds of cases occur before other types of deliberative bodies and thus in at least some respects resemble *suasoriae.*[41] In this category also are the pleas before

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[39] This reflects with some accuracy the status of young men under *patria potestas* in Rome, and is the conventional portrayal of young men in declamation; see my forthcoming article, "Sons and Fathers in the *Major Declamations* Ascribed to Quintilian."

[40] As well as those found in Cic. *Inv.*, *Her.*, Q., *RLM,* and the various Greek collections. In the introductory note to the commentary on each declamation I have noted these correspondences. For a listing of those that are extremely close or identical see Simonds 81 (use with caution; the numbering is from Burman's edition); Weber 25; and, more fully, Dingel 32 n. 79.

[41] See n. *ad* Calp. 18 for further discussion.

the senate for permission to commit suicide (Calp. 20, 38, 53), to reinstate disinherited sons (Calp. 18), and before other bodies to argue for a declaration of war (Calp. 39), to confer *imperium* (Calp. 50), or, perhaps, to appeal a call to military service (Calp. 52). A hearing before a religious board of some sort seems to be the venue for Calp. 26 & 44, while an informal assembly of citizens must be the locale for an election campaign speech (Calp. 47). More closely resembling court cases would be the numerous appeals to the tribunes lodged on the grounds of unjust punishment (Calp. 17, 23, 33, 42), and more certainly, a *divinatio* (Calp. 22, 49).

Laws and Locale

The subject of the laws found in these cases is a complex one. In the introductory remarks to the commentary on each theme, the interested reader will find discussion of the origins, validity, and venue (if any) of the legislation. It has been conventional to charge that these laws are fictional, or if there is some basis in fact, they primarily reflect the Greek legal system. While this is indeed true for some laws, recent scholarship has concluded that the laws found in Calp. (and Roman declamation in general) contain the essence of Roman legislation, if not expressed in the precise words of Roman law.[42] The venue of these cases displays the same lack of precision as the legislation. Some most definitely are located in the Roman world; for instance, the historical incident of a murder case tried before Marius (Calp. 3), or those identified by clear Roman allusions (e.g., Verginius and Lucretia, also in Calp. 3; the *lares, Tullianum,* and example of Manlius in 4; the *toga, lorica, imperium,* and obvious echo of Cicero in 50; the campaign speech of 47 and its play on Latin terms). In others we have references to such Roman institutions as the tribunes (Calp. 17, 23, 33, 42), the triumph (Calp. 8, 42), the consulship (Calp. 8, 47), the Roman province of Spain (and Roman preoccupation with Germany; Calp. 2), the priesthood of Mars (Calp. 26), the concept from the Twelve Tables of *talio* (Calp. 9, 43), and the execution of sons in accordance with *patria potestas* (Calp. 24, 44, 45, 46, 53). One could develop a case that this is indeed the most thoroughly Roman of the collections. Yet the Greek world is most assuredly denoted with the appearance of an *ephebus* (Calp. 41),

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[42] Summarized in Bonner 84-85. The major work on the subject, to which all who study the field owe a great debt, is the exhaustive Fabio Lanfranchi, *Il diritto nei retori Romani* (Milan 1938), copies of which are hard to come by because of the subsequent World War II. See W., review of Bonner (1977), *CR* 29 (1979) 74; also the survey of the subject in H. (1986) 2298 & esp. n. 80.

and the many cases dealing with tyrants.[43] The rest of the cases would appear to occupy a middle ground between the Greek and Roman world. In this category we may classify several cases which seem to reflect the attributes and stock characters of both Greek New and Roman comedy, as for example in Calp. 37 where a father gives his son money to buy his (the father's) courtesan's freedom, but the son uses it to purchase his own mistress's release.[44]

Content, and its Criticism

Obviously, the world of declamation as we find it in Calp., its laws, situations, and settings, appear far removed from the everyday realities and practicalities of the courts and public life for which declamation was supposedly a preparation. Apparently this was not always so, but from at least the time of the elder Seneca there was a trend toward subject matter increasingly divorced from reality. This prompted adverse comment and scathing criticism, especially during the first century AD.[45] One of the most famous condemnations appears in Tacitus' *Dialogus de Oratoribus,* a work which, as we have already seen, may well be close to contemporary with Calp. and the product of an author close to Pliny's circle, as Calp. himself may have been. The statement is put in the mouth of Messalla, and while it may not exactly reproduce the views of Tacitus, it certainly must reflect a widely held opinion of the time:

> controversiae . . . quales, per fidem, et quam incredibiliter compositae! sequitur autem, ut materiae abhorrenti a veritate declamatio quoque adhibeatur. sic fit ut tyrannicidarum praemia aut vitiatarum electiones aut pestilentiae remedia aut incesta matrum aut quidquid in schola cotidie agitur, in foro vel raro vel numquam, ingentibus verbis persequantur: cum ad veros iudices ventum . . . . (Tac. *Dial.* 35.4-5)

Calp. stands convicted, guilty as charged on all four counts: (1) rewards for tyrannicides occur in Calp. 1, 13, 22 (while other themes on the tyrants include 6, 11, 39, 45); (2) the options open to raped women (i.e., to have the rapist executed or to marry him without a dowry) form the themes of Calp. 16, 25, 34, 41, 43, 46, 51; (3) remedies for plagues

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[43] Unless, again, these are thinly disguised Roman emperors; See n. *ad* Calp. 1. On the general locations of decl. see H. (1986) 2298-2299. For example, of the 19 *MD* only 3 & 13 can be considered truly Roman in venue; MD 4, 6, 9, 11, 12, 16 are Greek; *MD* 14, 15, 18, 19 occur in indeterminate small cities.

[44] See n. *ad* Calp. 37. We may also point to the fun loving youths frequenting the *lupanar* of a pimp (Calp. 5); the dunning creditors of Calp. 20; the reform of a harsh father who had disowned his son (Calp. 18); and the two other plots involving *meretrices* (30, 33).

[45] This is a broad topic; see esp. Bonner, Chap. 4, "Declamation and its Ancient

are found in Calp. 19, 44; and, finally, (4) the *incesta matrum* occur in the broader sense of general offenses against sexual morality in Calp. 2, 23, 31, 49 (cf. 48), and more specifically, as incestuous acts, are implicit in Calp. 9, 22, 40.[46]

One may further fault the lurid content of many themes in Calp., especially when we recall that these were intended for schoolboys in their teens as, for instance, the very large proportion of cases dealing with sexual misconduct; e.g., the rapes and the sexual offenses of matrons cited above, to which we may add incest (Calp. 23, 44, 48; cf. 49), prostitution (Calp. 5; cf. 30, 33, 37), and homosexuality (Calp. 3, 20, 36, 45).

In defense of these exercises and their content a few points nevertheless require making:

(1) Though lurid and on occasion somewhat exaggerated, the themes in Calp. do not contain some of the utterly fictional material found in the other collections; for example there are no cases dealing with astrologers, magic, or ghosts.[47]

(2) The declamation themes generally (if not exactly) do reflect the prevailing practices of the courts and the social conditions of the period.[48]

(3) The educational system was essentially a private one and school masters had to compete on an open market for pupils. To attract and retain students, the teachers had to provide these teenage boys with fare more stimulating than the dull, dreary cases that constitute the majority of court litigation. This point was not wasted on Quintilian, a professional schoolmaster himself who both appreciated the dangers of overly imaginative exercises, and those of an empty classroom as well. He counsels a cautious middle ground, not unlike the one staked out in Calp., of allowing some leeway in the choice of themes that are somewhat unreal or even poetic, in the hopes that the student will eventually return to reality (Q. 2.20.5-15; cf. 10.5.14).

(4) Imaginative and complicated themes challenged the resourcefulness and intellect of declaimers and thereby provided good practice for the generally more mundane and less complex material of real

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Critics," 71-83; for the literature see the good summary and listing in H. (1986) 2298-2300.

[46] See also Weber 26. We may compare another famous text, this time of Q. (2.10.3-5), dating perhaps to shortly before the *Dial.*, where the schoolmaster specifically criticizes such unreal subject matter as magicians (none in Calp.), plagues (Calp. 19, 44), and stepmothers more cruel than those found in tragedy (Calp. 4; cf. 12, 22, 35).

[47] Cf. *DMin* 385; *MD* 4, 10, 14, 15. See H. (1986) 2299-3300.

[48] See Parks passim; Bonner 71-132 (esp. 131-132) and the series of articles by Tabacco (1978, 1978a, 1979, 1979a).

cases.[49] Thus, for example, in Calp. 3 a private is charged with murdering a superior officer, a most serious crime in any army, to say nothing of Rome's. The defense meets this very difficult challenge by portraying the youth as the very model of old time Roman virtue, and the officer as a disgusting degenerate. Further, despite its obvious limitations, declamation could prove beneficial in the development and honing of reasoning ability, argumentative skill, quick-wittedness, oral expression, and literary composition.[50]

Publication and Educational Purpose

On the face of it, the title *Excerpta* tells us that this collection was extracted from a larger body of work, the author of which, as we have seen, was Calpurnius Flaccus.[51] What then is the relationship between this man and the eventual publication of this work? There are several possible interpretations:

(1) Calpurnius Flaccus composed and delivered a large number of declamations. At some point these were published or at least passed around and available. At a later time excerpts were collected and placed under the appropriate theme headings by either the author himself, a student, or a later scholar.[52]

(2) Calpurnius Flaccus was a noted *rhetor.* Striking *sententiae* were recorded from his model declamations (similar to the *MD*), some on both sides of the case , by his students in their notebooks and later published.[53]

(3) Calpurnius Flaccus was an amateur devotee of declamation similar to the elder Seneca (or possibly a professional), who, after years of listening to performances and jotting down notable sayings, had them published, or these themselves were excerpted and then published. (The excerpting of the elder Seneca is evidence that excerpting of excerpts was done.) In the excerpting tradition the names of the *rhetors* responsible for the *sententiae* were not taken down (if they were in the original edition to begin with).

Nevertheless, the evidence of consistent style and internal parallels (as noted in the commentary) strongly suggest, however, that the

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[49] See esp. Bonner 83.

[50] For discussion and citation of these points see H. (1986) 2300-2301 & nn.

[51] The genitive case in the MSS titles is the evidence and the conventional means of expressing authorship.

[52] On the dissemination, availability, and publication of declamation collections in the early Empire see Sussman (1978) 79-80.

[53] The edition may have been authorized, or not; cf. Q.'s complaint about the same situation (1 pr. 7; 3.6.68). On the similarity to notebook recording see Weber 8; L.

sententiae are by and large the work of a single author, and again, the evidence of the MSS ascriptions tells us that this man was Calpurnius Flaccus.[54] The excerpting, as in the case of the elder Seneca, would have been done considerably later, as part of a scholastic movement which provided numerous summaries of the works of declaimers for the use of students and scholars alike, as is evident in the entire interrelated MS tradition of the elder Seneca, the Quintilianic declamations, and Calpurnius Flaccus.[55]

The format of the work makes its purpose obvious: to provide students with a compendium of *sententiae* to emulate. This is the very same reason that the elder Seneca enunciates to his sons as the guiding principle behind his own work:

> facitis autem, iuvenes mei, rem necessariam et utilem, quod non contenti exemplis saeculi vestri priores quoque vultis cognoscere; primum quia, quo plura exempla inspecta sunt, plus in eloquentiam proficitur.[56]

Even though we lack a plain statement of purpose, there are a number of clear indications that the *Excerpta* were specifically tailored for school use:

(1) An apparent disqualifier for such a role is the large number of themes that deal with sexual issues, mentioned previously. Some of these we would consider highly unsuitable for teenagers, even under today's rather permissive standards, as for example the cases of homosexual assault, homosexual prostitution, and a particularly unsavory case of abduction and rape (Calp. 3, 20, 41). Yet a close inspection of these and other similar examples betray nothing that is off color, lewd, or suggestive. This indicates that a careful hand was at work in making the selection: the topics were indeed titillating, but the selection was sober.[57]

(2) At times one can interpret a short passage as an example illustrating a generally valid point for students to store away for future use, as for example, how to argue against the validity of a voluntary confession.[58]

JAW (1902) 111.

[54] He was the author and not the excerptor. The style and the unity of authorship form the subject of a study now in progress.

[55] See Brzoska 1372; Schanz 153; also the discussion below.

[56] Sen. *C.* 1 pr. 6. Cf. his son's remark (*Ep.* 6.5): *longum iter est per praecepta, breve et efficax per exempla.* See W. (1984) XVII.

[57] See e.g., n. *ad* Calp. 3 (and *ad* H. 3.10); also nn. *ad* Calp. 20, 30. Obscenity often crept into the works of the declaimers; cf. the case of the noted declaimer Haterius; Sen. *C.* 4 pr. 9, 10.

[58] See Calp. 42 (H. 34.5-6): *confessio voluntaria suspecta est. confessionem sceleris*

(3) For their size, the collection preserves an amazingly large body and diversity of figures of speech, some usually quite rare in prose, as though this consideration had been one of the criteria for selection. Thus, for example, there is an inordinate number of occurrences of chiasmus, frequently with asyndeton.[59]

(4) Also redolent of the schools is the pronounced tendency to use the same noun in different cases, and a similar practice to show verbs in varied inflected forms, all within the same short sentence.[60] Often a single short sentence is the vehicle for demonstrating a large number of figures and stylistic devices, to the point where it seems deliberate. For instance: *quam miser est pater, cui verum dicendum est; quam misera mater, cui mentiendum!* This exclamation provides a superb example of how many devices can be crammed into a short, single sentence: anaphora, asyndeton, parallel structure, ellipsis, rhyme, and alliteration of the letter m to provide a pathetic effect.

(5) There are many examples of parallel structure, similar to the above, which have the useful didactic value of demonstrating how to present an idea from two different points of view, as for instance: *publicae utilitatis est omnium reorum iudicari causas, ne aut nocens evadat poenam aut innocens patiatur infamiam* (Calp. 32 [H. 28.22-29.2]); or, *accusator obicit quod adultero pepercerim; pater dolet quod nurum eius occiderim* (Calp. 49 [H. 37.20-21]).

(6) Similar to parallelism is the tendency to express the same idea in a slightly different way, e.g.; *iam tempus fletuum, immo iam tempus est caecitatis* (Calp. 10; H. 11.4-5). While this is indeed a stylistic trick, it also has the commendable educational value of demonstrating how a thought can be framed in two different ways and, importantly at times, from two slightly different viewpoints.[61] An important variation is the practice of Calp. to identify the same person with two different nouns in order to distinguish two separate types of activity or attitudes towards that individual, as for example: *qui fieri potuit, ut mala fuerit uxor, quae tam bona mater est?*[62]

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appellas vocem doloris. See my n. *ad loc.*, citing the more elaborate *DMin* 272.5 & W. n. *ad loc.*; cf. 314.6-7.

[59] Cf. H. 15.20-21 (3 part); 17.22; 20.7-8; 26.7-8; 27.6-8 (two sentences); 28.1; 31.3; 35.16, 17; 37.22-23; 38.8-9; 39.17-18.

[60] This practice for nouns is a type of word play usually referred to as polyptoton; cf. *Her.* 4.31; e.g. Calp. 52 (H. 39.22-24); *fortunae...fortunam...fortuna.* For verbs cf. Calp. 24 (H. 23.11); *faciat vitae finem qui originem fecit*; the latter practice may be more stylistic than educational.

[61] This is a notable practice in the *DMin*; see W. (1984)XVI & n. 20.

[62] Calp. 9 (H. 9.15-16); cf. Weber 23; L. *JAW* 113 (1902) 111; n. *ad* Calp. 1 (H. 1.8).

The Manuscripts

The earliest (10th century) and best MS of Calpurnius Flaccus is A, the Codex Montepessulanus H 126. It contains our most complete text of the *DMin* (244-388), then the *excerpta* of the elder Seneca introduced in this fashion: *hic iam incipit Seneca decem rhetorum felicter.* Following Seneca we have a title introducing Calp.: *Incipit ex Calpurnio Flacco excerptae, excerpta X rhetorum minorum.* Next comes in sadly mutilated shape the first six declamations.[63] This MS was unknown until the 16th century, but a very similar one, depending on a common archetype, was found in Germany and sent to Francesco Todeschini (later Pope Pius III). This was apparently the source of our two other main Renaissance MSS, C (directly) and B (through an intermediary).[64] The Codex Monacensis Latinus 309, referred to as B, dates to the 15th century and contains also the *DMin* and the Panegyrici XII, while the more valuable C, the Codex Chigianus Latinus H VIII 261, also dates to some time in the same century. This MS contains the *DMin* and is important because it alone provides the full 53 declamations of Calp.[65] Two shortly later MSS, both of the 16th century, are of considerably less value. These are M (Codex Monacensis Latinus 316), which contains only Calp., and N (Codex Bernensis Latinus 149), which includes our author in an eclectic miscellany of works dealing with legal matters, medicine, and alchemy. Both of these MSS introduce Calp. with *incipiunt ex Calpurnio Flacco excerptae.*[66]

The titles contained in the MSS and the Campano letter have given

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[63] For a full description of A see Müller XXIII-XXIIII & n. 1; L. (1903) V-VI; also H. (1978) III-IV; W. (1984) XX. On its history, discussed below, see esp. W. in L. D. Reynolds (ed.), *Texts and Transmission* (Oxford 1983) 337.

[64] See Reynolds 337; W. (1984) XX-XXI. A rather interesting, if cryptic, description of this lost MS survives in a letter of Giannatori Campano, *Campani opera omnia* (Venetiae 1495) fol. LXIII, *apud* L. (1903) IX: *centum et trigenta sex Quintiliani declamationes ad te nuper e Germania missas Quintiliani esse sic arbitror ut...subsequuntur in codice declamationum Senecae X libri...secundum has Calfurnii [sic] Flacci excerptae quaedam paucae perbrevesque sententiae quem ego inter declamatores laudatum nescio, an unquam legerim. argutulus tamen vult videri et, nisi quod brevior est, Senecae persimilis. post hunc "finis excerptarum" subscribitur litteris maiusculis et Anthonii Iuliani nescio cuius ac mox et extemporaneae Quintiliani promittuntur, ut facile appareat subsecuturas fuisse extemporaneas, cogitatas iam praecessisse....* See on this important piece of evidence W. (1984) XXI & nn. (I have not seen the original); L. has made a few obvious corrections in the Latin; i.e., *excerptae* (for *exceptae*); *fuisse extemporaneas* (for *fuisse extemporaneus*). Since Antonius Julianus was a *rhetor* known to Gellius, his inclusion here, as W. observes (n. 10), may serve to establish a fairly early date for both the *DMin* and Calp.

[65] See Schwab.

[66] They lack the earlier further information, *excerpta X rhetorum minorum*; cf. L. (1903) VIII. All the MSS stem from a single archetype, with A the most directly

rise to a good deal of speculation on the exact character of the collection to which Calp. is attached in the MS tradition. Unfortunately the lack of precise information and the fairly puzzling nature of the MS titles makes a definitive resolution on many points speculative.[67] We have reported above, however, the general agreement that the excerpts are indeed from the declamations of Calpurnius Flaccus, and not excerpted by a man of that name, nor a collection of the work of ten separate rhetors.[68] The supposition that there was an established canon of ten *rhetores minores* (and also, by analogy, one of ten *rhetores maiores*) is not supported by any hard evidence. The most likely explanation would appear to be that, first, the title information transmitted refers to a single MS tradition of excerpts from declamations. The archetype contained the *excerpta* of the elder Seneca and the *DMin,* both of which could easily be included under the rubric of excerpts of rhetors. There followed excerpts from the declamations of Calp., Antonius Julianus, and some other unspecified rhetors. Whether Calp. headed a list of ten *rhetores minores* appended to the elder Seneca and the *DMin,* or whether the entire collection just consisted of an inclusive ten cannot be determined definitively, although the latter seems to be the most attractive possibility; i.e., the full title of the work was *excerpta decem rhetorum minorum,* which somehow became jumbled in the transmission process.

Survival

The existence of A as Winterbottom observes was "a remarkable monument to Carolingian interest in Roman declamation," one which has almost without question a strong tie to the editorial efforts of a rhetorician of the late Empire.[69] Calpurnius does not have the rich *Nachleben* associated with the elder Seneca, *DMin,* and *MD* in the patristic period and the Middle Ages, but nevertheless his survival in the excerpted tradition is a witness to the high regard in which he was held, and to the

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connected; C through an intermediary (X), from which, through a now lost MS (Beta), spring B, and then through Psi, M and N. See the stemma in H. (1978) V, which in essence agrees with L. (1903) X.

[67] See Teuffel-Schwabe 208-209; Weber 15-16; Brzoska 1372-1373; L. (1902) 109-110, (1908) 479-480, (1920) 266; Schanz 153.

[68] Cf. the authorities cited, above nn. 14, 17.

[69] W. (1984) XX; perhaps to be traced to Domitius Dracontius and Hierius (?) of probably the late fourth century AD; cf. Sussman (1987) ix-x; P. Kragelund, "Epicurus, Pseudo-Quintilian, and the Rhetor at Trajan's Forum," *C & M* 42 (1991) 259-275 & esp. 272-275.

influence of Roman educational practices in the emergence of modern European civilization.[70]

Printed Editions

The first printed edition of Calp. was edited by P. Pithoeus (Paris 1580), followed by J. F. Gronovius (Leiden & Rotterdam 1665), U. Obrecht (Strasbourg 1698), and then P. Burman (Leiden 1720), very valuable not just for the excellence of his text and notes but also because he has supplemented the latter with the extremely perceptive corrections and observations of these previous scholars, as well as P. Francius and especially J. Schultingh. Several other texts subsequently appeared, essentially based on Burman, and useful only if one cannot pry that now very rare and estimable work from the hands of protective librarians (the Lemaire edition [Paris 1821-1825] is relatively easy to obtain and the reproduced commentary from Burman is actually simpler to use). G. Lehnert's Teubner text (Leipzig 1903) appeared just after the turn of the 20th century, reaping the benefit of the recently improved methodology of textual criticism and the work of continental scholars, one of whom (Schwab) discovered two additional declamations to add to Burman's 51. Nevertheless the text appears to have been hastily and a little carelessly edited, as briefly pointed out by Meister and at length by Håkanson in two fundamental and valuable articles (1972, 1974) which proposed substantial changes in Lehnert's edition. Håkanson's own Teubner appeared shortly thereafter (Stuttgart 1978), a vast improvement on its predecessor, although strangely enough, to date no review has appeared. At the inception of my project to provide a translation and commentary for Calpurnius Flaccus, I relied heavily on Håkanson, but found myself disagreeing with his text in a sufficient number of instances that it seemed worthwhile to offer what I consider to be an improvement, or at least an alternative view. Furthermore, in H.'s two articles he makes many suggestions and emendations (some brilliant) which he does not reproduce in the Teubner text, merely noting their existence in the *app.* or omitting mention of them altogether, probably out of modesty or conservatism, realizing that his text would undoubtedly remain the standard version, barring a major manuscript discovery, for the next century or more. I have also frequently changed

[70] On the elder Seneca see Sussman (1978) 153-172; on the Quintilianic declamations see Ritter (1884) 209-212, 253-255; W. (1984) XX, 290; H. (1986) 2279-2280, 2296-2297; Sussman (1987) vii-x; and now Kragelund. A suggested reminiscence of Calp. 2 (*Natus Aethiops*) in medieval France is erroneous; see H. Silvestre, "Note sur la survie de Calpurnius Flaccus au moyen age," *C & M* 21 (1960) 218-223; cf. the

the punctuation, sometimes because of a different interpretation of the text, at others to reflect more closely the conventions of English style. Major differences between my text and Håkanson are noted and usually discussed in the commentary, whereas minor ones may be passed over without comment, but will be obvious through checking the variants recorded in H.'s *app.* Since the Teubner is the standard and likely to remain so for some time, and is readily available, and since in any event the textual tradition is uncomplicated, I refer the reader to its *app.* To facilitate the comparison of my text to it, and again because the Teubner should be considered the standard reference point, I have noted at intervals in the margin of my Latin text the page and line equivalent of Håkanson (i.e., H. 2.10 = p. 2, line 10 of Håkanson's Teubner). I have also identified references to the Calp. text in my discussion by the dual reference method of declamation number followed by Teubner location; e.g., Calp. 2 (H. 2.10).[71] I have continued Håkanson's practice of attempting to identify where individual thoughts break off in the excerpts; instead of using a capital letter, I have italicized the initial word (or two words if the first happens to be a single letter word such as "I" or "a") of each separate extract in order to make these demarcations easier to spot. Major divergences from Håkanson are noted in the commentary. I would like to record here my indedbtedness and gratitude to Teubner for allowing me to employ this text as the initial basis of this text, translation, and commentary.

The Translation

As we have seen, the *Excerpta* of Calpurnius Flaccus consist of literary *lumina,* striking examples of expression chosen for their stylistic virtuosity, mastery of the full repertoire of figures, cleverness, and exhibition of rhetorical skill. This makes translation a formidable task. First and foremost, these are excerpts and therefore removed from their immediate context. The speakers are often, as it would seem, indulging in irony or sarcasm that would be more apparent in a full text. The meaning of a sentence will frequently hinge on the play of a single word, imperfectly understood because of the lack of a sufficiently understood setting for that word. Many times even such basics as how to punctuate a sentence (period? exclamation point? question mark?) are obscure. Therefore, while the sentences themselves are relatively uncomplicated in structure, they are nevertheless often difficult to com-

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discussion in n. *ad* Calp. 2.

[71] On occasion where there is a long list of references, I have dispensed with the declamation number.

prehend. The nature of such a text presents the translator with two basic problems: (1) how to comprehend expression that because of its ornateness and excerpted nature can be very hard to interpret, and (2), how to render into appropriate English the many stylistic devices of the original in order to provide the reader with some flavor of the Latin original.

I have responded by adopting the same methodology employed in translating the *MD*.[72] This English version is an attempt to provide an accurate and fairly literal translation which will allow readers both fully conversant with Latin or even rusty in their skills to work through the original text using this as a reference guide. For this reason I have tried to retain where possible approximately the same order of clauses and the same punctuation. The style used is slightly formal and occasionally old fashioned in an attempt to mirror the language generally used in formal court proceedings. However, at times when the speeches are delivered by an actual participant (and not a colorless advocate), I have felt free to use colloquial touches which would be normal under such circumstances. Nevertheless, I have attempted throughout to recreate a mode of speech that suggests the great differences which existed between declamatory and ordinary styles. Where possible I have attempted to render into English such rhetorical devices as an anaphora, asyndeton, and even chiasmus. I have inserted into the theme sections of each declamation such statements (nonexistent in the original Latin) as *The Law* and *The Situation* to aid the reader who may not be familiar with the way in which the speeches are presented in the literature of Roman declamation. Also in an effort to make things clearer for the reader, I have added the notations found in the later MSS telling for or against whom the speech was delivered.[73] Similarly, I have felt free to expand upon the terse titles applied to each declamation.

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[72] See Sussman (1987) x-xi.
[73] See H. (1978) V & n. 7.

PART ONE

TEXT AND TRANSLATION

TEXT

1. UXOR TRYANNICIDA

QUINQUE CUM TYRANNO PROXIMI FAMILIAE PUNIANTUR. quae habebat duos filios et tyrannum virum, tyrannicidium fecit. praemio impunitatem liberis postulavit. meruit. ex his alter
H. 1.5 occupavit arcem, et eum mater occidit. petit alteri impunitatem. contradicitur.

"*Occidam,*" inquit. quanta nobis ante patienda sunt, dum occidere tyrannum femina possit et mater velit? "non possum mortem filii mei videre." hoc est ergo quare illum velimus
H. 1.10 occidere!

Pars Altera

Petit praemium, non quod accipiat, sed quod accepit.

2. NATUS AETHIOPS

Matrona Aethiopem peperit. arguitur adulterii.

H. 1.15 *Expers* iudicii est amor: non rationem habet, non sanitatem; alioquin omnes idem amaremus. *Nonnumquam* incredibiliter peccare ratio peccandi est. "*Non* semper," inquit, "similes parentibus liberi nascuntur." quid tibi cum isto patrocinio est,
H. 2.5 nisi ut appareat te pecasse securius? *Miramur* hanc legem esse naturae, ut in subolem transeant formae quas quasi descriptas species custodiunt? sua cuique genti etiam facies manet. rutuli sunt Germaniae vultus et flava proceritas; Hispaniae < . . . > non eodem omnes colore tinguntur. ex altera parte, qua
H. 2.10 convexus et deficiens mundus vicinum + mittit orientem, illic effusiora corpora, illic collectiora nascuntur. diversa sunt mortalium genera, nemo tamen est suo generi dissimilis. "*Quid*

TRANSLATION

1. The Wife Who Killed Her Tyrant Husband

The Law: A tyrant and his five closest family members shall be subject to the death penalty.
The Situation: A certain woman who had two sons and a tyrant as her husband committed tyrannicide. For her reward she claimed her children's exemption from the penalty. This was granted. One of her sons seized the castle and the mother killed him also. She requests her other son's exemption from the penalty. This is opposed.

(Against the mother)

"*I shall* kill him," she tells us. But how much must we first endure until a woman is able, and a mother is prepared, to kill a tyrant? "I can't look upon the death of my son" That is precisely why we want to kill this man!

(The other side)

She seeks the reward, not one that she may receive, but one that she has received.

2. The Son Who Was Born Black

The Situation: A married woman gave birth to a black son. She is accused of adultery.

(Against the wife)

Love is blind: it has neither rhyme nor reason. Otherwise, we would all love in the same way. *Not* infrequently the reason for sinning is to sin in a manner that invites disbelief. "*Children* don't always take after their parents," she tells us. What business do you have with employing this sort of defense plea, other than to reveal that you have sinned quite recklessly? *Are* we surprised for this to be a law of nature, that a person's features are inherited by his offspring, and that the races of man preserve these like the transcribed copies of a document? Indeed, for each race of man its own characteristic physical appearance remains fixed. In Germany they have ruddy faces and their great stature is crowned by blonde hair; in Spain < . . . > they are not all imbued with the same shade of skin. In the opposite direction, where the vault of Heaven, curving out and coming to an end + dispatches the rising sun, there more sprawling, and yes, there more compactly sized bodies are born. The races of men are diverse, yet nobody is dissimilar to his own par-

ergo?" inquit, "amavi[t] Aethiopem?" est interdum, iudices,
malarum quoque rerum sua gratia, est quaedam <deformium>
voluptas. miraris si aliquis non sapienter amat, cum incipere
H. 2.15 amare non sit sapientis? da mihi sanos mulieris oculos: nemo
adulter formosus est. periturae pudicitiae minima in eo est
sollicitudo quemadmodum pereat. proprium est profanae
libidinis nescire quo cadat. ubi semel pudor corruit, nulla
inclinatis in vitium animis ruina deformis est. *Is* demum libidini
H. 2.20 placuit, in quem non posset mariti cadere suspicio.

Pars Altera

Ita non maius est argumentum pudicitiae, quod parere voluit,
quam impudicitiae, quod <in>feliciter peperit? vides partum
laesis fortasse visceribus excussum: multum fortunae etiam
H. 2.25 intra uterum licet. vides sanguinis vitio perustam cutem;
colorem putas. istud fortasse infantis iniuria est. hoc ipsum,
quod alte infuscatam cutem livor infecit, dies longus extenuat.
nivea plerumque membra sole fuscantur, et corpori pallor
excedit. quamvis naturaliter fuscos artus umbra cogit albescere.
H. 3.5 tantum tempori licet quantum putas licere naturae.

3. Miles Marianus

Miles Marii adulescens propinquum Marii tribunum vim sibi inferentem peremit. reus est caedis. C D.

"*Propinquus,*" inquit, "imperatoris occisus est." macte virtute
H. 3.10 adulescens! et Marium vindicasti. *Ubicumque* periclitatur
pudicitia, suam legem habet. *Quid* agis, tribune? tibi nondum
vir est qui Mario iam miles est? *Non* longe ab eo est [miles], ut
promittat stuprum, qui, rogatus, tantummodo negat. *Crede,*
imperator, male de te iudicasset miles tuus, si tribuno
H. 3.15 pepercisset. *Hanc* vim Verginius parricidio fugit; propter hanc
Lucretia pectus suum ferro fodit. pudet me, imperator: feminae

ticular race. "*What* are you saying then," she goes on, "*I* made love to a black man?" Gentlemen of the jury, now and then disgusting acts also have their own distinctive qualities of attraction, and people take a certain pleasure in <shameful deeds>. Are you surprised that someone falls in love irrationally, since it is by no means the mark of a rational person to embark upon a love affair at all? Grant me the eyes, sensible ones, of a woman: no adulterer is handsome. Chastity doomed to be lost cares not the least how it should be lost. It is a peculiarity of depraved lust not to care where it may drop. When once chastity has been ruined, no source of ruin is degrading after people's minds have sunk into vice. *In* the end, the man who gratified her lust was one on whom her husband's suspicion could not fall.

(The other side)

Is not therefore the fact that she desired to give birth stronger evidence of her chastity than the fact that she did give birth disastrously is evidence of her inchastity? You see a fetus violently discharged from her possibly injured internal organs: much of its plight may even yet be inside her womb. You see scorched skin—it's the blood's fault; but you regard it as the pigment of its skin. What you see may well be an injury to the baby. This very condition, the fact that bruising has darkened and deeply discolored its skin, a long lapse of time may alleviate. Quite often snow-white limbs are tanned by the sun, and a pale complexion departs from the body. Shelter from the sun forces limbs to become pale, however naturally swarthy they were. Grant as much time as you think nature allows for this process.

3. The Soldier in the Army of Marius

The Situation: A young soldier in Marius' army violently killed a relative of Marius, a colonel, who tried to assault him forcibly. He is charged with murder. He contests it.

(Speech for the soldier)

"*A relative* of the commanding general has been slaughtered," says my opponent. Excellent work, young man! You have saved Marius the trouble. *Whenever* his moral purity is imperiled, a man has the law on his side. *What* are you trying to do, colonel? In your eyes is this not yet a man, who, in Marius' eyes is already a soldier? *The* person who does no more than say no when propositioned is not far from promising compliance. *Believe* me, general, your soldier would have judged you wrong had he spared the colonel. *Verginius* avoided this sort of assault by killing his own daughter; for a like reason Lucretia pierced her own breast with a sword. General, I feel ashamed: I am defending

exemplis militem tueor. *Stuprum* minatus est militi tuo? minus est quod nobis Cimbri minantur!

Pars Altera

Miles tuus, imperator, iam aliquid impudici habet quod ad impudicitiam placet. *Tu* gladium commilitonis tui cruore tinxisti quem satis fuit minari.

4. Parricida Carcerem Petens

Damnatus parricidii anno custodiatur. qui sub noverca damnatus est, vult illum pater domi custodire. ille petit ut publico carcere servetur.

Iubete quam primum ad illas me impiorum tenebras trahi; liceat impetrare quod non licet recusare. *Ego* me umquam crederem tam infelicem ut mihi aliquis etiam carcerem invideat? *Parum* est tibi in cruciatus meos annus et carcer? vereris ne quem gemitum miseri aures tuae perdant, ne non singulis tormentis meis paterni oculi fruantur, ne laxata vincula desit qui astringat? *Non* potes adversus damnatum iure patris uti: iam non larem habeo, non sacrum, non patrem, ac, ne damnatum esse paeniteat, non novercam. *Video* carcerem publicum, saxis ingentibus structum, angustis foraminibus tenuem lucis umbram recipientem. in hunc rei abiecti robur Tullianumque prospiciunt, et, quotiens iacentes ferrati postis stridor excitat, exanimantur, et alienum supplicium [ex]spectando suum discunt. sonant verbera, cibus recusantibus spurca manu carnificis ingeritur. sedet ianitor inexorabili pectore, qui matre flente siccos teneat oculos. inluvies corpus exasperat, manum catenae premunt. *Quid* est quod me lex anno reservat? nescioquid diu cogitat? nimirum de parricidio, etiam cum <liquet> [creditur], non <creditur> [liquet]. *Aestimate,* iudices, quid fugiam, qui hoc postulo! *Quid* hoc est, iudices, a patre

a soldier with precedents taken from the experience of women. *So,* he threatened your soldier with a perverted act? What the Cimbri are threatening us with is far less serious!

(The other side)

General, your soldier is a closet homosexual, since he sexually attracts homosexuals. *You* stained your sword with the blood of your own fellow soldier, when it would have been enough just to threaten him off.

4. The Parricide Who Sues for Imprisonment

The Law: A person convicted of parricide shall be kept in custody for a year.
The Situation: A certain man was convicted of parricide during the ascendancy of a stepmother in the household. His father wants to keep him in custody at home. The son sues to be kept in the state prison.

(For the parricide)

Order me to be dragged away as soon as possible to those darkened dwellings of the wicked; please, may I have this request, one which you may not reject. *Could* I have ever believed myself to become so pathetic that someone should even begrudge me a term in prison? *As* you see it, is a year in the state prison not enough to torture me; are you afraid that your ears may miss some groans of your suffering son, that a father's eyes may not enjoy every single torment of mine, that there won't be anyone to tighten up my chains when they grow slack? *You* cannot exercise your legal rights as a father against a son already convicted: now I have no home, no sacred family altar, no father, and, what is more, but something to stop me from feeling sorry that I have been condemned, no stepmother. *I can* visualize the state prison, constructed of huge stone blocks, receiving through the narrow chinks just a faint semblance of light. Culprits cast into this prison look forward to the execution cell, and whenever the creaking of the iron-bound door stirs those helpless, sprawled out people, they are terrified, and by viewing someone else's punishment, they learn of their own soon to come. Whip lashes crack, food is delivered in the foul hands of the executioner to those who then refuse it. The hard-hearted doorkeeper sits by, a man whose eyes would remain dry even when his mother weeps. Filth roughen their bodies, chains grip their hands tightly. *Why* is it that the law keeps me alive for a year? For some reason does it need a long time of consideration? Of course in the case of parricide, even when it is proven, it is not believed. *Gentlemen* of the jury, consider what I am trying to avoid, I who make this request! *Why* is it the

parricida non timeor? *Dicam,* "saevite," cum carcerem rogem? dicam, "miseremini," cum carcerem rogem?

H. 5.5 Pars Altera

Egone secretum isti conscientiae dabo et ibi te patiar includi ubi non erubescas? dignus es, parricida, dignus es videre patrem, si tam grave putas ut vel carcerem malis. *Debeo,* iudices, debeo tandem agere mitius pater, si tam graviter sibi
H. 5.10 damnatus irascitur. *Mirabar* si quis tantum sceleris auderet qui<n> contemnere carcerem posset? *Fugit,* odit, avertitur, et limen patris execratur. ignoras profecto sortem tuam, si putas aliud iudices debere respicere quam quod nolis. hanc lucem patere, si gravis est; hunc diem, si odisti, vide. *Nihil* illi adversus
H. 5.15 patrem liceret, si parricida non esset.

5. Leno

Iuvenes frequenter ad lupanar veniebant. cum his leno frequenter denuntiasset ne accederent, foveam fecit et complevit ignibus. adulescentes cum venissent, exusti sunt. accusatur a
H. 5.20 parentibus eorum leno laesae rei publicae.

"*Denuntiavi,*" inquit. dii boni! quantum ausus est cui ne post denuntiationem quidem creditum est! *Fuit* in illis summa pietas; placuere patribus: summa frugalitas; displicuere lenoni. *Tu* te iure audes defendere? nihil ei licet in quem nihil non licet. "*Denuntiavi,*" inquit. novimus lenonum minas venales. "*Iniuriam,*" inquit, "faciebant mancipiis meis." quid enim aliud in his quam iniuriam vendis?

H. 6.5 Pars Altera

Ubi quid futurum est denuntiatum, culpa patientis est.

case, gentlemen of the jury, that I, a parricide, am not feared by my parent? *Should* I say, "Vent your rage upon me," when I beg for this? Should I say, "Take pity upon me," when I beg for prison?

(The other side)

Shall I grant total isolation to that guilty conscience of yours, and shall I allow you to be locked away in a place where you may not show your shame? You murderer! You deserve, yes you do indeed deserve to look upon your father, if you consider it so hard to bear that you would even prefer prison. *Gentlemen* of the jury, must I, yes must I after all act more indulgently as a father, if this convicted man is so vehemently angry with himself? *Would* I be surprised if someone who dared such a great crime should <not> even scorn the state prison? *He* avoids me, he hates me, he is estranged from me, and he detests his father's house. You are indeed ignorant of your own position if you think that the jury should take into consideration anything else than the fact that this is against your will. See how this light stretches out, if it is hard to bear, see how this day does, if you hate it. *If* he were not a parricide, he would not be allowed to do anything against his father's wishes.

5. The Brothel Keeper

The Situation: Some young men used to frequent a brothel. After the brothel keeper had frequently warned them not to come by, he constructed a pitfall and filled it with fire. When the youths came by again, they were burned alive. The brothel keeper is charged by their parents with the crime of harming the state.

(Against the brothel keeper)

"*I gave* them fair warning," he tells us. Good Lord! What great presumption for a man who wasn't even believed after this warning! *Those* youths had the noblest sense of proper conduct; they pleased their parents: their habits were very sober; they displeased a brothel keeper. *You* then, do you presume to defend yourself on any legal grounds? Nothing is legal for a man against whom nothing is illegal. "*I gave* them fair warning," he tells us. We are all well aware that the threats of pimps can be bought and sold. "*They* inflicted sexual assaults upon my slaves," he says. Of course! What else do you peddle in these girls than their submission to sexual assaults?

(The other side)

When someone is given fair warning of the consequences, the fault is the victim's.

6. Decreto Reditu Exul Occisus

Adulescens dives nobilis hospitatus apud exulem. exul scripsit
senatui velle se indicare de affectata tyrannide. senatus
H. 6.10 revocandum censuit, hoc divite contradicente. dum revertitur
exul, occisus est. accusatur dives affectatae tyrannidis.

Intercepisse te putas indicium; ipse fecisti. *Secundum*
sententiam divitis pauper non est reversus. *Dicturum* se de
tyrannide pollicetur. quid vis suspicemur? *Tu* nihil nuntias,
H. 6.15 sed, unde venisti, venerunt epistulae <te> consecutae. sed cur
de publico statu mandare hospiti noluit? *Putatis* illum
contradixisse? confessus est. *Sceleratis* ingeniis et plus quam
civilia cupientibus, non dominari instar servitutis est. iam
pridem [te] arci nostrae tua fortuna minitatur. supra civilem
H. 6.20 hanc peraequationem divitiae te elevaverunt. *Non* sine exemplo
timemus: in Manlio quondam potuisse damnatum est.

Pars Altera

Non intellego quemadmodum infamet iste sententiam meam.
ego si auditus essem, ille non esset occisus. *Inquieta* res est
homo cui iam in deterius nihil superest. *Egerat* mecum illic
H. 7.5 multa de iudicibus, de ignominia sua. prodam necesse est
affectus hospitis mei: hoc tyrannis videbatur.

7. Dives Imperator

Pauper et dives inimici. pauperi duo filii. dives imperator
creatus. rumor ortus est prodi rem publicam a pauperis filiis.
H. 7.10 utrumque torquens pernegantem necavit. corpora eorum extra
vallum proici iussit. quae hostes sepelierunt et recesserunt.
pauper accusat divitem caedis.

6. The Exile Murdered After His Return Was Decreed

The Situation: A rich, noble young man stayed as a guest at the home of an exiled man. The exile wrote to the senate that he wanted to disclose evidence about an attempted tyranny. The senate decreed that he should be summoned back, although the rich man in question opposed the motion. While the exile was returning, he was murdered. The rich man is accused of attempted tyranny.

(Against the rich man)

You think you intercepted the evidence; but you yourself provided it. *The* poor man did not return, in keeping with the rich man's opinion expressed in the senate. *He* promised that he would speak about the tyranny business. What do you want us to suspect? *You* report no news, but from the place whence you came, came letters that caught up with you. But still, why did he refuse to send a message with his guest concerning order in the state? *Do* you think he merely opposed the resolution? No, he made an open confession. *For* minds that are criminal and desire more than what is suitable to one's status as a citizen, not to be a despot is the equivalent of slavery. For a long time now your wealth has threatened our seat of government. Your riches have elevated you above this status of equality proper for a private citizen. *Our* fears do not lack a precedent: a long time ago in the case of Manlius the possession of this potential was condemned.

(The other side)

I don't understand why this person is casting suspicion on my vote in the senate. If I had been listened to, that man would not have been killed. *A man* to whom there is now nothing worse that can happen is a restless object. *In* that place of his he had spoken a great deal with me about the jurors, about his own disgrace. I must reveal the impression that my host gave: because of this experience he seemed resolved on tyranny.

7. The Rich General

The Situation: A poor man and a rich man were enemies. The poor man had two sons. The rich man was appointed commanding general. A rumor arose that the poor man's sons were betraying the state. Torturing both of them, he killed them, although they denied it to the end, and ordered their corpses to be cast out beyond the palisade. These the enemy buried and they then withdrew. The poor man charges the rich man with murder.

Numquam, iudices, contra istum tutior veni. quicquid auferri potuit, amisi. *Soli* omnium torti sunt, donec mentirentur. *Ita* laniatos miseros, ita confusis lineamentis proici iussit, ut iam nec pater posset agnoscere. *Miramini,* si ab hostibus sepulti sunt? nullos sic ab isto esse tortos nisi captivos putarent. proditores putas quos tam misere tamque crudeliter punitos hostis non vindicavit? "*Pauperes* erant," inquit, "et ideo potuere corrumpi." age, qui nescit illos ideo perisse, quod divitias nimis oderant? *Super* eculeum corpus extenditur, et irato imperatori tortor non sufficit. uritur, et flagella ignibus adiuvantur. quaeritis exitum? perneg<antes nec>avit. tortor inimicus tamen, quod quaerebat, invenit, nos proditores, qui pro te, patria, etiam sub isto militavimus.

Pars Altera

Negas potuisse corrumpi? pauperes fuerunt. negas voluisse prodere? inimici. *Non* possum tibi proditionis argumentum afferre praesentius: quamdiu vixere, pugnatum est. *Cum* mihi civitas mandaret imperium, quo malo laboraret, intellexit. imperatorem me fecit inimicus.

8. Demens Ter Triumphalis

Ter triumphalis, ter consularis, cum haberet liberos aeque ter triumphales, ter consules, suspendit se. liberatus a liberis ab iisdem reus fit dementiae.

Omnium calamitatum materia est homo diu felix. nesciunt stare successus, et quotiens prodire felicitas non potest, redit. *Mori* volo; quid me iam fortuna custodit?

(Against the rich man)

Gentlemen of the jury, never have I appeared against that man feeling safer. I have lost whatever could have been taken away from me. *Unique* among all men, they were tortured—until such time as they would give a false account. *He* ordered those poor souls to be cast out in such mangled shape, with such hard to recognize features, that by then not even their father could identify them. *Does* it surprise you if they were buried by the enemy? They would suppose that none would be tortured in such a way by this villain unless they were captives. Do you think they were traitors—men whom an enemy did not avenge, even though they were so pitifully and so cruelly punished? "*They* were poor," he tells us, "and for this reason they could be bribed." Come on! Who doesn't know that they perished for this reason—because they hated wealth too much? *Each* body is stretched over the rack, and yet a torture master isn't good enough for the enraged general. Each is burned, and, what is more, whips are supplemented by flames. You ask for the outcome? He put them to death, though they denied the charges to the end. My enemy, now the torture master, nevertheless found what he was seeking, yes, that we were traitors, yes, we who served in defense of you, our homeland, and even under that villain's command.

(The other side)

Do you deny that they could have been bribed? They were poor. Do you deny that they wanted to betray me? They were my personal enemies. *I can't* furnish you with any more effective evidence of their treachery than this: as long as they lived there was fighting. *When* the state entrusted me with the military command, it knew because of whose mischief it was suffering. Yes, my enemy made me commander-in-chief.

8. The Insane Man Who Had Celebrated Three Triumphs

The Situation: A man who had celebrated three triumphs and had been consul three times hung himself, although he had sons who had likewise celebrated three triumphs and had been consul three times. Rescued by his sons, he is brought to trial by the same on the charge of insanity.

(Speech for the father)

A man fortunate for too long a time is fertile ground for the full range of calamities. Success does not know how to stand still, and whenever good luck is unable to advance, it reverses direction. *I want* to die; why does my good luck even now protect me?

Pars Altera

Ter consulatum gessisti, ter triumphasti; licet iam velit fortuna mutari, in illius potestate non est fuisse. *Quis* timeret fortunam, nisi prodisset?

9. Pater Excaecatus

Cum luxurioso filio pater abdita matre secessit in secretum. excaecatus rediit. petit a filio talionem. mater se fecisse dicit.

Invenit, iudices, pessimus adulescens, quomodo utrumque excaecaret parentem. *Quid* te secreto fecisse credamus? matrem in foro excaecas. *Non* vis pro matre verum dicere, cum illa pro te mentiatur? *In* tantum iuvenis processit amentiae, [ut] propter illum pater ut perderet oculos, mater odisset. *Tu* me, mulier, excaecare potuisti, quae nec parricidam potes? *Ut* innocens sis; dum excaecaretur pater, exspectasti? "*Non* feci," inquit: non crederem, si confitereris. *Talis* es, adulescens, ut excaecare volueris patrem, aut te excaecare velit pater. *Quam* sceleratus es! plus te pater odit quam eum a quo excaecatus est. *Tantum* ausus est integro patre. quid facturus est inter duos caecos? *Quam* miser est pater, cui verum dicendum est; quam misera mater, cui mentiendum! *Non* eruit oculos quisquis laborat, ut hoc fecerit. *Cuius* crimen est excaecasse patrem, patrocinium excaecare matrem. *Qui* fieri potuit, ut mala fuerit uxor, quae tam bona mater est? "ego feci." non sceleris, sed matris ista confessio est.

Pars Altera

Si neganti, iudices, non vultis, quod proximum est, credite confitenti. *Sed* si difficile est fateri, etiam cum feceris damni paulum, < . . . . >

(The other side)

Thrice you served as consul, thrice you celebrated triumphs; although now your fortune is prepared to undergo a change, that you were what you were was not in her power. *Who* would fear fortune, had it not been prosperous?

9. The Father Who Was Blinded

The Situation: After the mother was put into isolation along with their wastrel son, the father of the family retired into seclusion. He returned, blinded. He seeks retribution in kind from his son. The mother says that she did it.

(Against the son)

Gentlemen of the jury, this totally evil young man discovered a way to blind both parents. *Why* should we believe that you did this in private? You are blinding your mother out in public. *Are* you unwilling to speak the truth in your mother's defense, when she lied in your defense? *The* young man progressed into so deep a state of madness that because of him his father lost his eyesight and his mother hated her own. *Could* you blind me, you, a woman who cannot even blind this absolute scoundrel? *Let's* grant that you are innocent; did you wait about in expectation until your father was blinded? "*I didn't* do it," he tells us. I wouldn't believe it even if you were to confess. *Young* man, you're the kind of fellow that wanted to blind your father—or rather such that your father wants to blind you! *What* a scoundrel you are! Your father hates you more than the person by whom he was blinded. *He* dared such a great crime when his father wasn't handicapped. What does he intend to do amid two blind people? *How* pitiful is a father who must tell the truth! How pitiful is a mother who must tell a lie! *Whoever* took the pain to do this very thing—that person did not pluck out my eyes. *Blinding* his mother is the defense in court of one whose crime it is to have blinded his father. *How* can it be that a woman who is so good a mother has been an evil wife? "I did it," she says. That remark is the confession not of a crime but of a mother.

(The other side)

Gentlemen of the jury, if you are unwilling to believe me when I deny it, do the next best thing, believe her when she confesses it. *But* if it is difficult to confess, even when you have committed a minor crime, < . . . . >

10. Pater Receptis Oculis

Cui erant tres filii, amissis duobus flendo oculos perdidit.
somniavit se recepturum oculos, si tertius filius perisset.
somnium uxori indicavit; illa filio prodidit. suspendit se
H. 10.15 adulescens; pater recepit oculos. repudiat uxorem. agit illa
iniusti repudii.

Ante omnia hoc ad vos meae defero infelicitatis, quod videre
coepi, si spectatores oculi tertiae redeunt orbitatis; qui
calamitatibus cesserant, parricidio reverterunt. *Mirabar*
profecto, quod in utriusque orbitate solus pater oculos
H. 10.10 perdidisset. *Iussus* sum videre, postquam spectatorem tertia
orbitas non habebat. *Numquid* discutiunt recti necessitatem
qui aliquid amore fecerunt? *Cessate* parumper, exhausti fletus;
differ aliquantum, saucium lumen. decet esse oculos duriores
qui scelere reverterunt. *Nullum* in tali calamitate ab uxore
H. 10.15 solacium; miserationem meam tunc habuit, post<quam> coepi
monere de filio. horret referre animus quod paenitet indicasse.
Nec remedia quaerenda sunt ubi maior<is> supplicii sanatio.
"*Gratulandum* patri est quod non filius somniavit. debet hoc
sola mater audire, vel ut filio caveat, vel ne mariti doleat
H. 10.20 caecitatem." arcesso coniugem: "iam," inquam, "esse caecus
cupio. etiam nunc apud me latet quod sola tu nosti." *Subito*
aspectu somnii in metus veni, et, fateor, de filio quidem timui,
sed de matre non credidi. *Nullum* impatientius malum est quam
invidia cum calamitate. qui, ut scelerate viderem, non recepi
H. 10.25 oculos, sed perdidi caecitatem, vidi miser primum quod
ultimum videram: pendebat extinctus et contentus laqueus
adulescentis colla tenuebat. pro nefas! haec in filium cum
oculis meis venerant. *O, quam* putasti nec maritum posse
sanari! *Iam* tempus est fletuum, immo iam tempus est
H. 11.5 caecitatis!

10. The Father Who Regained His Sight

The Situation: A certain man who had three sons lost his eyesight through weeping after he had lost two of them. He dreamed that he would regain his sight if his third son died. He divulged the dream to his wife; she revealed it to their son. The young man hung himself; the father regained his sight. The law provides that one may divorce a wife. She goes to court on the charge of wrongful divorce.

(Speech for the husband)

Above all other considerations I lay before you this special aspect of my misfortune, the fact that I began to see again, since my eyes return as witnesses of a third son's loss; and these eyes, which had stopped functioning because of my disasters, returned through the murder of my son. *I was* surprised indeed, since at the loss of both sons, only their father had lost his sight. *I was* forced to see, since the death of my third son lacked a witness. *Can* it be said that those who have done something because of love dissipate the demands of what is morally right? *Stop* for a little while, tears now used up; grant a moment's respite, oh my suffering sense of sight. Eyes are quite properly tougher which have been restored through a crime. *There* was no comfort from my wife in this disaster of such an exceptional nature; after I started to give her the warning about our son, only then did she begin to "feel" the compassion felt by me. My mind shudders to repeat what it regrets that it divulged. *We* must not seek remedies where the cure is a source of still greater suffering. "*The* father ought to rejoice that his son did not have the dream. His mother alone ought to hear of this, either so that she may look out for her son or so that she does not grieve over her husband's blindness." But I summon my wife before this court: "Now," I say, "I wish to be blind. What you alone know even now lies hidden in my heart." *At* the sudden advent of my vision I came into mortal terror of my dream, and, I admit, I did indeed fear for my son, but I didn't imagine this of his mother. *No* misfortune is more unbearable than indignation joined with disaster. Unfortunate man that I am, who, to see through the agency of a sinful act, did not recover my eyesight but lost my blindness, I saw for the first time what I had seen the last time: a dead man was hanging and a tightened noose was constricting a young man's neck. Good Lord, what a horrible thing! All this came about for my son along with my sense of sight. *Oh,* how you supposed that your husband could not at all be cured! *Now* is the time for weeping; yes, now is the time for blindness!

11. Damnati Adoptivi

Pauper et dives inimici. pauperi tres filii. quodam tempore visi sunt amici. petit dives a paupere filios in adoptionem et accepit. unus in adulterio deprehensus est et occisus, alius affectatae tyrannidis reus factus est damnatus. tertium pauper repetit. dives contradicit.

Nihil tamen praeter luctus meos gravius quam quod, ubi odia nihil fecere, videatur amicitia plus nocere. *Quicquid* esse potuit in paupere, totum dives accepit. qui si bonum animum in adulescentes meos tenuit, filios ambo perdidimus. *Novum* audaciae genus: tyrannidem affectat pauperis filius. *Utinam* sic filios perdidissem, ut queri de fortuna liceret! dolere integre non potest qui urgetur irasci. *Scio* quales habuerim: et inimico et diviti placere potuerunt. *Divitiae* inconstantium animorum [in] summa pernicies. <fac eum> vel velle ad me redire vel nolle: si vult, non delectat qui retinetur invitus; si non vult, iam timeo quod divitias amare coepit. *Permissae* licentiae magna securitas est potestas cum moderatione. *Recordare* quantis meis redemerim malis ne adhuc videremur inimici!

12. <Veneficii Rea>

Veneficii rea torqueatur donec conscios inidicet. Amissa uxore, ex qua habebat filium, duxit alteram et de ea suscepit filiam. adoleverunt ambo infantes. repente ambiguis signis perit adulescens. pater uxorem accusavit et damnavit. cum torqueretur, filiam sibi consciam dixit. petitur puella ex lege ad poenam. adest ei pater.

Noverca filios nostros aut insimulatione persequitur aut veneno, quae scelus suum et in domo veneficae et in suppliciis docuit parricidae. *Adoleverunt* ambo, sed minor filia et praeter sexum

11. The Condemned Adoptive Sons

The Situation: A poor man and a rich man were enemies. The poor man had three sons. At a certain point they appeared to become friends. The rich man asks the poor man for his sons in adoption and took them in. One was caught red-handed in adultery and killed, another was tried and condemned on a charge of attempted tyranny. The poor man seeks the restoration of his third son. The rich man contests it.

(Speech of the poor man)

In spite of what has been said, except for my own grief, nothing is more difficult to bear than this: in a situation where our mutual hatred has caused no result, our friendship would appear to be a greater source of harm. *The* rich man received the full measure of whatever could be of value to a poor man. And if this man retained his benevolent attitude towards my young men, then we both lost our sons. *This* is a strange kind of reckless conduct: a poor man's son attempts to become a tyrant. *How* I wish I had lost my sons in such a way that I would be allowed to complain about bad luck! One who is forced to feel resentment cannot grieve correctly. *I know* what sort of sons I had: they could find favor from a man who was both rich and an enemy. *Wealth* is the chief undoing of changeable minds. <Suppose that> he either wants to return to me, or that he doesn't: if wants to, one who is kept against his will is no source of delight; if he is unwilling, now I am already afraid because he has begun to love money. *For* unruly behavior allowed free rein, the main safeguard is parental authority coupled with control. *Recall,* how great a price I paid in my own misfortunes so that we would not still appear to be enemies!

12. <The Woman Guility of Poisoning>

The Law: A woman guilty of poisoning shall be tortured until she discloses her accomplices.
The Situation: After a man lost his wife, by whom he had a son, he married another woman, by whom he had a daughter. Both infants grew up. The young man died suddenly, suffering from suspicious symptoms. The father accused his wife and secured her conviction. When she was tortured, she said that the daughter was her accomplice. The girl is indicted for punishment in accordance with the law. Her father appears in her defense.

(Speech for the daughter)

This stepmother persecutes our children either by allegation or by poison, a woman who has demonstrated her own criminality both in the home as a poisoner and in her torture as a parricide. *Both* of them grew

multo fratre simplicior. *In* uno utriusque mortem videtis. cum periit adulescens, et fratri venenum datum est et sorori. *O novercae* stulta crudelitas! amasset et consciam putaremus? pro nefas! conscia dicitur cui frater perit! *Cur,* postquam adolevit puella, est interemptus adulescens? tamdiu ergo fuit novercae quieta crudelitas, quamdiu aetas illius ad persuasionem conscientiae perveniret? modum non habet iracundia mentiendi.

13. Medicus Tyrannicida

Tyrannicidae praemium. Tyrannus, suspicatus sibi venenum datum ab eo medico quem in arce habebat, torsit eum. ille pernegavit. misit ad medicum civitatis. dixit datum illi ab illo venenum, sed se remedium daturum. dedit poculum, quo exhausto statim periit tyrannus. contendunt de praemio.

Absit, sanctissimi iudices, ut hanc vos fidem tyranicidii detrahatis quam et medicus confirmaverit et tyrannus. *Confingunt* nocendi voluntatem postquam sanandi rationem perdiderunt. *Poenas* meas hinc cogitate in quibus nec ira nec natura cessavit. tolerabilis vis est ubi ad consuetudinem mali causa necessitatis emergit. ultio quidem illa, non quaestio. tyrannus venenum <non> quaesivit; se vindicavit! *Praemium* consequitur qui ausus est et confirmare meum venenum et suum remedium polliceri? *O quam* facile + regunt persuasiones illecebr<ae, ver>umque in contrarium transferunt! + *Virus* serpebat interius et artus omnes longa poenarum dilatione languebant. veneficium iam tyrannus agnoverat. quia instantem interitum sentiebat, festinans medicum flagitabat. *Unde* venenum tam celeriter praeparasti? dicis forte, "maior mihi dandi veneni fiebat occasio quae ex ipsius voluntate veniebat." nativum hoc genus <ti>moris est, ut ex sensu priore ad cuncta cautior sollicitudo procedat. nonne iam apud

up, but my daughter was younger and much more naive—leaving aside her sex—than her brother. *In* the one you see the death of them both. When the youth died, a fatal dose was given to both brother and sister. *Oh* how foolishly cruel the stepmother was! Would the girl have loved him so, yet on the other hand should we suppose her to be an accomplice? Isn't it horrible! The girl in whose interest her brother perished is stated to be her accomplice! *Why* was the youth killed *after* the girl grew up? Is it true that the stepmother's cruelty was dormant for so long, until such time as the girl's age reached the stage where she could be convinced to be an accomplice to the crime? Anger knows no limit of lying.

13. The Doctor Who Killed a Tyrant

The Law: There is a reward for slaying a tyrant.
The Situation: Suspecting that he had been given poison by a particular doctor whom he kept on call in his castle, a tyrant tortured the man, but he steadfastly denied it. The tyrant sent for the city's doctor. He told the tyrant that he had been given poison by the other doctor, but that he would administer an antidote. He gave the tyrant a cupful, and, after draining it, he immediately died. They dispute over the reward.

(Speech of the castle doctor)

August members of this tribunal, God forbid that you should impugn this convincing evidence of the tyrannicide which both a doctor and a tyrant have corroborated. *They* are fabricating the intent to harm him, after they lost the means of curing him. *Consider* my punishment at this man's hands, in the course of which neither his rage nor his inborn bent relented. Violence is endurable when the reason of its inevitability emerges to deal with the continued suffering of pain. That was indeed his revenge, not an interrogation. The tyrant did not interrogate me about the poison; no, he vented his vengeance! *Does* the man who dared both to corroborate my own act of poisoning and to promise his own antidote now aim at the reward? *Oh,* how easily + the enticements carry within them the capacity to convince and shift the truth into its opposite! + *The* poisonous brew kept slowly spreading more deeply during the lengthy delay caused by my punishment. At this stage the tyrant became fully aware of the poison. Since he began to realize that death was imminent, pressed for time, he began to clamor for a doctor. *By* what means did you prepare a poison so quickly? Perhaps you are saying, "I had a more favorable opportunity for administering poison since it arose from his own free choice." Well, there exists this naturally occurring type of <fear>, with the result that a more cautious concern would arise from his previous experience in

tyrannum cuncta suspecta praesens formido faciebat? *Medicum* tota arce clamabat quasi ego de tyrannicidio non negassem. *In*
H. 14.5 arce me nec animus deseruit nec venenum.

14. Abdicatus Patrem Liberans

Addictus feneratori serviat. Abdicatus de bonis paternis nihil habeat. Libertorum bona ad patronos pertineant. Quidam ex duobus liberis alterum abdicavit. <abdicatus> addictum postea
H. 14.10 creditori patrem redemit et manumisit. quo mortuo ambigunt de bonis abdicatus iure patroni et filius, qui<a> in familia permansit.

Equidem nec avarum me fuisse nec impium docui, nam et redemi patrem et manumisi. "*Abdicatus* es," inquit. en quem
H. 14.15 putes doluisse casum meum! *Filius* dicit beneficio parentis se esse nutritum, eius indulgentia libertatem civitatemque sortitum. at haec ipsa patronus liberto suo contulit quae filius a parente percepit. proinde beneficium hereditatis filio datur, patrono redditur. *Addictus* numquam sperat libertatem;
H. 14.20 negligenter enim et contumaciter servit qui servire non novit. *Quid* mihi abdicatorum obicis legem? ego si quasi filius experirer, merito ut abdicatus expellerer. utor patroni actione, non filii. *Quid* enim, si non esset manumissus? peculium servi mei peteres? specta defuncti condicionem quae fuit mortis tempore, non quae aliquando praecessit. *Sistitur* venalis pater; non festinat hic bonus filius? non denique metuit ne illum
H. 15.5 redimat abdicatus? filius incolumi dignitate non potuit explicare quantum abdicatus explicuit? *Quotiens* se pater

regard to all the circumstances. Didn't his immediate sense of alarm now begin to render everything as suspicious in the tyrant's eyes? *The* tyrant kept shouting for a doctor throughout the entire castle as if I hadn't denied anything about my attempt on his life. *In* that castle neither my courage—nor my poison—failed me.

14. The Disinherited Son Who Freed His Father

The Laws: (1) One who is assigned for debt shall serve in the capacity of a slave to the moneylender. (2) A disinherited son shall possess none of his father's estate. (3) The estates of freedmen shall revert by right to their former masters.
The Situation: A certain man disinherited one of his two sons. Afterwards the father defaulted on a debt to a moneylender and was assigned for debt to his service. <The disinherited son> settled the account, securing his father's release and granted him his formal freedom from the obligation to himself. When the father died, the disinherited son, according to his rights as a former master, and the other son, <since> he remained in the family, dispute over the estate.

(Speech for the disinherited son)
For my part, I have demonstrated that I have been neither greedy nor lacking in filial devotion, for I both secured my father's release by paying his debt and then granted him his freedom. "*You* were disinherited," he tells us. Come on! You would think he even felt grief over my plight! *The* other son says that through his father's kindness he was brought up, through his benevolence he obtained freedom and citizenship. But look, a former master has conferred upon his own freedman these very things which a son has reaped from his father. Accordingly, the benefit of an inheritance is given away to a son, but is rightfully restored to a former master. *A man* assigned for debt never hopes for freedom; that is to say, a man who does not know how to serve as a slave plays the part of a slave carelessly and defiantly. *Why* do you throw in my face the law dealing with disinherited sons? If I were going to law as a son, I would deservedly be rejected since I was disinherited. I am entering the plea of a former master, not of a son. *What* then would have been the case had he not been granted his freedom? Would you be suing at law for the privy purse of my own slave? Consider the status of the dead man which existed at the time of his death, not what preceded it at some time in the past. *His* father is put up for sale; why doesn't this fine son act promptly? In short, doesn't he fear that his disinherited brother will settle the account and secure his release? Couldn't that son, with his status intact, set him free, just as much as his brother, though disinherited, actually did set him free?

paenitere confessus est, quotiens de huius impietate conquestus! utinam licuisset addicto exercere ius patrium! esset hic abdicatus, hic filius. *Bona* ipsa meo sunt labore quaesita; unde
H. 15.10 senex testari noluit, ne mihi quasi suum relinqueret, quod meum sciret. tu illud prius consumpsisti patrimonium, illud amplum, illud quod <d>uobus parabatur heredibus. ego postulo tenue, libertinum, quod vix sufficit ipsius funeri. hic enim quando sepeliet iacentem, qui noluit redimere venalem?

H. 15.15

15. Ter Fortis Desertor

DESERTOR CAPITE PUNIATUR. TER VIR FORTIS MILITIA VACET. PRAEMIUM VICTOR IMPERATOR ACCIPIAT. Ter virum fortem imperator coegit ad bellum. coactus deseruit. imperator praemio impunitatem desertoris petit. desertor contradicit.

H. 15.20 *Aequo* animo imperator ferat, si quem virum fortem senserat obsequentem, desertorem videat contumacem? *Nec* poenam possum recusare post culpam nec veniam sustinere post gloriam. *Miserum* me, cuius nec infamia potest latere nec gloria! *Non* ante rem publicam quam me ipse deserui. et armis et telis honestissimum corpus oneravi et, quod non sine piaculo factum est, consecrata iamdudum arma deposui. *Sto* et pugno pro legibus; aliter enim fortiter facere iam in hac aetate non possum. *Grata* sunt ei crimina desertoris, apud quem nihil
H. 16.5 valuerunt privilegia viri fortis. *Novum* genus damnationis ignoscere. <*Mori*> volo. cur enim dubitem per infamiam senex emori qui etiam iuvenis optavi saepe <per> gloriam?

How many times did Father confess his regret, how many times did he complain about his son's lack of filial devotion! If only this man, since he was assigned for debt, could have been allowed to enforce his legal rights as a father! Yes, this son, this son, I say, would have been disinherited. *This* very estate was earned by my own hard work, and for this reason the old man refused to make a will, so that he would not leave behind to me, as if it were his own, what he knew to be mine. *You,* yes, you squandered previously that estate of Father's, that one which was impressive in size, that one which was intended for two heirs. For my part, I demand a trivial sum, that of a freedman, one which scarcely suffices for his own funeral. For when will this man, who refused to settle his father's account and secure his release when he was up for sale, when will he ever bury his body, one still lying there dead?

15. The Man Decorated for Bravery Three Times Who Deserts

The Laws: (1) A deserter shall be executed. (2) A man decorated for bravery three times shall be exempt from military service. (3) A victorious general shall receive a reward.
The Situation: A general compelled a man decorated for bravery three times to go to war. The man so compelled deserted. The general institutes a suit for the deserter's exemption from the punishment as his reward. The deserter opposes this.

(Speech for the deserter)

Would the general take it calmly if he should see as a willfully disobedient deserter any man whom he had recognized as an obedient war hero? *I can* neither make objection to my punishment after my wrongdoing nor bear the weight of a pardon after my glory. *I am* in agony, I, neither whose disgrace nor glory can be concealed! *For* my part I did not fail the state before I failed myself. I loaded down my highly honored person with arms for both short and long range combat and then—something not done without a ceremony of expiation—I laid down in surrender arms dedicated long before to the gods. *I am* standing up and fighting in defense of the laws; for in no other way at this stage of my life can I fight bravely. *The* charges against a deserter are welcome to a man under whose command the special privileges of a war hero counted for nothing. *Pardoning* me is a new way of condemning me. *I wish* <to die>. For why should I hesitate to die as an old man during the period of my disgrace, I, who even as a young man often desired to die <during> my period of glory?

16. Rapta Tacens

Lex raptarum. Rapta producta ad magistratus tacuit et flevit. magistratus de raptore supplicium sumpsit. puella se interemit. reus est magistratus quod causa mortis fuit.

Reum caedis unius arcesso qui duos pariter occidit. *Aditus* huic reo misericordiae clausus est; quid enim sperare poterit a lacrimis? *Iuvenis* etiam facie liberalis, qualem nemo non sibi aut filium optet aut generum. is cum puellae peteret nuptias, diu peteret, et iam sperare coepisset, festinavit ut amator et—quid dicam—rapuit an duxit? virgo, quod solum potuit, nihil questa est. *Quis* non inhorruit, quis tecum, puella, non flevit? *Dicat* nunc: "libuit et licuit"! civis haec, an regis oratio est? nec erat arbiter iudicii sui sed minister alieni. "tacuit," inquit. o mira et muta sententia! omnes sciunt lacrimas ex uno misericordiae fonte manare, in amore vel maxime, nam isdem oculis quibus amatur et fletur. *Miser* ille quem nullo accusatore punisti; miserior illa quam te vindicare simulasti. *Quis* te, oro, poterit aut liberare flentem aut flere damnatum?

17. Paedagogus Cruciarius

Civitatem peregrinus ursurpans veneat. Pauper et dives inimici. visi sunt in gratiam redisse. pauper accusatus

16. The Raped Woman Who Said Nothing

The Law: The statute regarding raped women.
The Situation: A raped woman brought before the magistrates said nothing and just wept. One magistrate had the rapist put to death. The girl committed suicide. The magistrate is brought to trial on the charge that he was responsible for her death.

(Speech against the magistrate)

As defendant on the charge of a single killing, I summon before the court a man who killed two people by the same action. *Any* access to an appeal for pity in this defendant's case has been precluded; for what can he hope to gain from tears? *The* young man was indeed noble in his personal appearance, the type which nobody would fail to pray to have either as his own son or as his son-in-law. Since this man sought the girl's hand in marriage, sought it for a long time, and had already began to anticipate it, he became impatient, typical for a lover, and—how shall I put this—did he rape her or did he marry her? Since it was the only thing she could do, the young woman lodged no formal complaint at all. *Who* did not begin to shake in fear, who, dear girl, did not weep along with you. *Now* let him say, "it was my will and it was legal"! Is this the language of a fellow citizen or of a king? He was not the presiding judge of his own court, but an assistant in someone else's. "But she said nothing," he tells us. Oh, what an eminent—and silent statement! Everybody knows that tears flow from a single fount of compassion, in love quite especially so, because one is also wept for by the same eyes by which one is loved. *Unfortunate* is that poor fellow whom you punished when nobody accused him; but more unfortunate is that girl whom you pretended you were protecting. *Who,* I ask you, will be able either to acquit you when you weep or weep for you when you are condemned?

17. The Paedagogus Sentenced to the Cross

[*Translator's note:* As Butler, the Loeb ed. & transl. of Quintilian states when dealing with the unusual position of the Roman paedagogus: "There is no translation for *paedagogus,* the slave tutor. *Tutor, guardian, governor,* and similar terms are all misleading. He had the general supervision of the boy, escorted him to school and elsewhere, and saw that he did not get into mischief, but did not, as a rule, direct his studies" (n. 1 *ad* Q. 1.1.8; I, 22). I have therefore retained the Greek term in the following translation for the lack of an English equivalent.]

The Law: A foreigner who passes himself off as a citizen shall be sold into slavery.
The Situation: A rich man and a poor man were enemies. They appeared to become reconciled. Charged with being an alien, the poor

peregrinitatis venit. emit eum dives et paedagogum filio dedit. adulescens in adulterio deprehensus occisus est. agitur paedagogus in crucem. appellat tribunos de iniusto supplicio.

Equidem, iudices, propitium mihi divitem semper optavi. totum me divitis fidei, et ante quam redimerer, addixi. *Audio* me subito peregrinum, quod nec pater ipse nec mater aliquando prodiderat, nec denique umquam inimicus dives obiecerat. *Filio* me luxurioso iam et petulanti dedit, quamvis omnia pater ipse curaret et regeret. *Imploro* auxilium quod vestri maiores servis iam natis reliquerunt. unum non est in servitutem nasci et libertate multari? *Statim* credidisti fidum et idoneum iudicasti, sed non esse felicem iam tum scire potuisti. "*Occisus* est," inquit, "filius meus." si iniuria, interfectorem argue; si iure, leges. *Ego* illum adulterum feci, credo, luxuria mea, servus novicius et pauper ante quam servus. *Multa* largiebaris, indulgebas omnia, nihil umquam negabas.

18. Armati Abdicati

Abdicati ad curiam convenerunt armati petentes revocari. unus ex patribus contradixit. filius eius se interemit. idem suadet ut recipiantur.

Peto ne indulgeatis irae domesticae cum me videatis publicae paenitere sententiae. nam, sicut in vita numquam errare felicis est, ita errorem quam primum emendare sapientis. *Parentum* illa deliberatio fuit, haec iam cunctatio parricidarum est. "*Aetate* lapsi sumus; egestate correcti. in hoc vos exoramus loco in

man is sold into slavery. The rich man bought him and gave him to his son as his *paedagogus.* The youth was killed when surprised in the act of adultery. The *paedagogus* is led off for crucifixion. He appeals to the tribunes on the grounds that this constituted unjust punishment.

(Speech of the *paedagogus)*

For my part, gentlemen of this tribunal, I have always wanted the rich man to be well disposed towards me. I devoted myself entirely to an allegiance towards the rich man, even before I was purchased. *I hear* that I have suddenly become a foreigner, something which neither my father himself nor my mother had ever revealed to me at any time in the past, nor which, in the final analysis, the rich man had ever thrown in my face when he was my enemy. *He* gave me to a son already then licentious and wanton, however much the father, for his part, tried to watch over and control him in every respect. *I earnestly* invoke the intervention which your forefathers left as their legacy even to born slaves. Isn't it not one and the same thing to be born into slavery and to be punished with the loss of your freedom? *Right* from the start you believed me to be trustworthy and you considered me qualified, but you could have known even then that I was not lucky. "*My* son was killed," he tells us. If illegally, indict the killer; if legally, indict the laws. *Yes,* I suppose, I made that son of yours an adulterer through the example of my own dissolute living, I, a newly purchased slave, and a poor man before I was a slave. *You* kept on lavishing many possessions on him, you kept indulging his every whim, you never denied him a thing.

18. The Disinherited Sons Under Arms

The Situation: A group of disinherited sons under arms assembled at the senate house petitioning to be reinstated. One of the fathers spoke against the measure. His son committed suicide. The same man speaks in favor of admitting them to their former status.

(Speech for the disinherited sons)

I request that you do not give free scope to your own personal anger when you see me expressing regret for my public pronouncement. For just as it is the mark of a fortunate man never to make a mistake in the course of his life, so it is the mark of a wise man to correct a mistake at the earliest possible moment. *That* previous speech of mine was marked by the careful deliberation characteristic of parents, but this one now is marked by the hesitation of men who may be responsible for the deaths of their sons. "*We* went wrong because of our immaturity," [they tell us,] "but we were reformed by our poverty. We prevail upon you in

quo etiam hostes superati non frustra supplicaverunt." *Ego*
ille tristis et saevus cum abdicarem, tamen flevi et semper ex
eo, licet tacitus, ingemui et opportunum ius restitutionis optavi.
restituet nobis filios auctoritas publica tamquam alia natura.
Vereor iam, P. C., ne sapientior videatur et cautior ille
H. 18.15 abdicatorum senatus. fateor, armatorum facie non immerito
terremur; <minantur> enim suam mortem. *Quemadmodum*
possum, te, fili carissime, vel in morte revocabo; inferam
maiorum sepulcris et elogio, quod optasti, nomen inscribam.

19. Abdicatus Immolandus

H. 18.20 In pestilentia responsum est finem futurum immolato eo qui
patrem non haberet. offert se abdicatus. qui abdicavit,
contradicit.

Amplexus sum mortem usque adhuc necessarium, nunc etiam gloriosam. *Mori* prohibes et intervenis quominus spiritum quem fortunae meae debeo patriae profundam. *Quotiens* te video, totiens me scio patrem non habere.

H. 19.5

20. Prostitutus ex Geminis

Ex duobus geminis alter prostat, alter reddit in senatu causas mortis voluntariae.

Utinam quidem, P. C., mori vellet frater! *Homini* verecundo
cur necesse est, ut ea de germano meo dicam, quae tanti habeo
H. 19.10 perire ne videam? nostis nos, P. C.; etenim pluribus noti sumus
quam et aetas et verecundia postulat. *Raptus* est mihi frater
pessimis comitibus et perditis. duce namque luxuria et
subremigante seu potius velificante nequitia in illos
impudicitiae scopulos et ipsa famae suae naufragia delatus. *Pro*

this very place where even conquered enemies have not begged in vain for mercy." *I was* the man you well knew, grim and harsh I was; although I disinherited him, nevertheless I have wept and constantly anguished over it, though quietly, and I prayed for a timely, justified claim for reinstatement to their former status. Let your official approval restore our sons to us on the grounds that their characters have changed. *Gentlemen* of the senate, I now fear that this "senate" of our disinherited sons may appear to be wiser and more prudent than we. I confess it; not without good cause are we terrified at this spectacle of armed men; yes, <they threaten> death—but it's their own. *My* dearest son, I will summon you back as I can, even if only in death; I will inter you in the tomb of our ancestors and I will inscribe my name added to yours on your epitaph, something you hoped and prayed for.

19. The Disinherited Son to be Offered as a Sacrifice

The Situation: During a plague an oracle advised that it would end when a man who had no father was sacrificed. A disinherited son volunteers. The man who disinherited him contests it.

(Speech of the disinherited son)

I have embraced death until this point as unavoidable, now also as glorious. *You* forbid me to die and you are intervening to prevent me from giving to my country the life which I owe to the workings of my own fate. *Whenever* I see you, just so often do I realize that I have no father.

20. The Male Prostitute and his Twin Brother

The Situation: One of two twins hires out as a male prostitute, the other delivers his reasons for suicide before the senate.

(Speech of the brother intending suicide)

Gentlemen of the senate, how indeed I wish that my brother wanted to die! *Why* must I, a modest man, say about my own full brother things which I think it worthwhile to die to save myself from seeing? Senators, you know us; and indeed the fact is that we are personally known to more people than both our age and modesty require. *My* brother was lured away from me and corrupted by his disgusting and depraved companions. Well then, with Dissipation as the captain of his ship, and with Vice rowing the oars in support, or rather, operating the sails, he was brought landward onto those projecting rocks of homosexual perversion and to the very shipwreck of his own reputation. *By* God and

deum atque hominum fidem! qua in civitate prostitui licet, mori non licet? an utrumque congruere aestimatis huic ordini et vitam turpem permittere et ab honesta morte prohibere? *Vivere* non sustinerem si hoc in mea vel sorore vidissem. *Improbi* flagitatores, qui detrimenta pueritiae suae mutuo dedecore compensant.

21. Pictura Viri Fortis

VIRORUM FORTIUM FACTA PINGANTUR. VIRI FORTES DE PRAEMIO ARMIS CONTENDANT. Fratres fortiter fecerunt. pater a minori petit ut maiori cederet. non impetravit. proelio interfecit maiorem minor. petit praemio ne facta pingantur. pater contradicit.

Si quid precibus contra filium meum possem, domi monere quam publice maluissem. nihil audeo filio dicere quam quod ab ipso nuper audivi: leges uti valeant. *Fuit* ille amator et cultor suorum et qui mori mallet quam quicquam mali facere. "*Cede* fratri, cede vel patri; victor eris, mihi crede, si cesseris." *Didici* salvis legibus parricidium posse committi. *Cetera* iam non sunt narranda, pingenda sunt. *Vana* et inepta formido est videre non posse quod feceris et colorem timere peius quam sanguinem. simuletur hoc factum non tantum colore, sed aere, si possit, et lapide, et quacumque nostrorum corporum materia vel ars aemula est. *Infecta* quemadmodum possunt esse quae facta sunt? picta quidem interim non sunt, sed in omnibus pectoribus incisa sunt, in oculis, in animis, in ipsis denique tuis manibus. *Tu* victoria clarus es, ille innocentia.

22. Privignus Tyrannicida

TYRANNICIDAE PRAEMIUM. PRAEMIO CEDERE LICET. Qui novercam habebat, occidit tyrannum. cessit novercae praemio. illa

all that is holy! Is one not allowed to die in a city where one is allowed to be prostitute? Do you really think this body acts consistently in each case when it permits one person to live a disgraceful life and prohibits another from dying an honorable death? *I wouldn't* bear to live if I had seen this happen even in my own sister's case. *These* men are shameless, dunning creditors who counterbalance the loss column of their own violated boyhood by lending out their disgrace to one another.

21. The Hero's Picture

The Laws: (1) The brave deeds of heroes shall be painted in pictures. (2) Heroes shall contend in combat over a reward.
The Situation: [Two] brothers fought heroically. Their father requests that the younger give way to the elder. His request was unsuccessful. The younger son killed the elder in the combat. He seeks as his reward that his exploits not be painted. The father objects.

(Against the son)

If I could accomplish anything against my son's opposition through my prayerful requests, I would have preferred to advise him at home rather than in public. I venture to say nothing to my son other than what I have just heard from his very own lips: let the laws be applied. *That* man was a lover and champion of his family and country, and one who would prefer to die rather than do any wrong. "*Yield* to your brother, yield at any rate to your father; a victor you will be, if you yield—believe me." *I have* learned that fratricide can be committed without breaking the law. *Now* the rest of the story ought to be painted, not stated formally as the facts in this case. *Groundless* and foolish is your dread at not being able to see what you did, and also at fearing the paint worse than the real blood. Let this deed be represented not just in paint, but in bronze, if possible, also in stone, and in whatever medium artistic skill also rivals our actual flesh. *How* can [the portrayal of] those events which have been done, be left undone? Certainly, for the time being, they have not been painted, but they have been engraved on all our hearts, on our eyes, on our minds, and, in point of fact, on those very hands of yours. *You* are famous for your victory, your brother for his innocence.

22. The Stepson Who Killed a Tyrant

The Laws: (1) There is a reward for slaying a tyrant. (2) A person may renounce a reward in another's favor.
The Situation: A certain man who had a stepmother killed a tyrant. He renounced the reward in his stepmother's favor. She requests marriage

privigni nuptias petit. contendunt quis contradicat, maritus an
H. 20.20 privignus.

Cum suo parente contendit, ut mihi videatur melior adhuc
privignus esse quam filius. coepit et hic me sic habere despectui
ut, qui novercae beneficium se dedisse laetatur, a me nec
accipere dignetur. *Ego* primus in domo mea, fateor, erravi, qui
uxorem duxi senex, cum iam esset in domo filius et quidem
iuvenis. dum nimium confido pietati, oculos mulieris incestos
et infanda desideria nutrivi. *Novercae* praemio cessit, cum
H. 21.5 haberet in domo patrem cui nemo praeferret in tali honore vel
matrem. *Non* privignum ante temptavit? quis, rogo, fructus
est impetrare nuptias hominis inviti? *Uter* [vos] vobis actor
utilior vide[re]tur et verior, maritus an caelebs? filius familias
an pater? senior an iuvenis? qui repudiatur an qui praeponitur?
qui beneficium dedit an qui accepit iniuriam? mea uxor
H. 21.10 abducitur; tu quis es? meum cubile deseritur; ad te dolor iste
quid pertinet? "*Ego,*" inquit, "praemio cessi." tu ergo non
potes revocare quod dederis eamque reprehendere quam paulo
ante laudaveris. *Cavendum* tibi est ne, si victus (ut sunt
iudiciorum incerta) discesseris, dicaris iudicio quoque sic
H. 21.15 cessisse quasi praemio. sic est livoris ingenium: omnia
suspicantur qui nihil audiunt. *Das* amanti solacium: affers in
amore vel iurgium?

23. Peregrinus Cruciarius

Civitatem peregrinus usurpans veneat. Liceat in matribus
adulteria vindicare et de iniusto supplicio tribunos appellare.
H. 21.20 Qui videbatur de civibus natus, cum absente patre eam, quae
mater videbatur, in adulterio deprehensam insequeretur
armatus, ait illa, "non es meus." perseveravit et occidit. postea
iudicio peregrinus pronuntiatus emptus est ab interfectae patre.

to her stepson. The husband and the stepson contest over which one should address the court in opposition.

(Speech of the husband)

He competes with his own father so that up to this point he appears to me to be a better stepson than a real son. Even in these proceedings he has begun to hold me in such contempt that the son who is delighted to have done a favor for his stepmother thinks it unworthy even to receive one from me. *I made* my first mistake, I confess it, in my own household, I, who as an old man, married when there was already a son in the house, and indeed a young man. While I put excessive trust in his filial devotion, I fueled the woman's incestuous eyes and monstrous longings. *He* renounced the reward in his stepmother's favor when he had in his house a father, someone over whom nobody should give preference in such an honor—even a natural mother. *Didn't* she sound out her stepson ahead of time? What is the advantage in succeeding to marry a man against his will? *Which* of us seems to you the more effective and the more proper advocate, the husband or the bachelor? The son of the household or the father? An older man or a youth? The one who is being rejected or the one who is being preferred? The one who gave away the benefit or the one who suffered the insult? My wife is being taken away; you—who are you, anyway? My marriage bed is being deserted; this anguish of mine you speak of—why is it any of your business? *He* tells us, "I renounced the reward." You in that case cannot take back what you have given away and censure a woman whom you honored just a little while ago. *You* have to be on your guard, because if you end up losing the case (given the uncertainties of trials), people may say that you also yielded in the trial just as you had in the reward. The inherent quality of maliciousness is this: those who hear nothing, suspect everything. *You* offer a source of comfort to someone in love; but are you possibly producing the grounds for a quarrel in a love affair?

23. The Foreigner Sentenced to the Cross

The Laws: (1) A foreigner passing himself off as a citizen shall be sold into slavery. (2) One may punish mothers caught in adultery. (3) One may appeal to the tribunes on the grounds of unjust punishment.
The Situation: There was a certain man who was apparently the son of citizens. When, during his father's absence, he pursued with a weapon the woman who was apparently his mother after she was surprised in the act of adultery, she said to him, "you are not my legal son." He pressed on and then killed her. Afterwards declared in court to be a foreigner, he was bought as a slave by the father of the slain woman.

ab eodem agitur in crucem. reversus peregre is qui pater videbatur, appellat tribunos de iniusto supplicio.

Vixdum reversus in patriam, si tamen hanc adversarii vel meam patriam esse concedunt, parabam, tribuni, cognito filii mei casu appellare vos de iniusto supplicio servitutis. *Sed* quatenus socer saevit ut nec generum velit agnoscere nec nepotem, det et mihi veniam doloris, si non desum filio bene de me, bene de legibus merito, cum ipse vindictam quaerat exigere filiae vel nocenti. huius ego legibus filiam duxi eamque praegnantem simul vidimus et uteri decem menses ambo numeravimus et natum ex ea pignus accepimus. *Sed* cum me necessitas peregrinationis abduceret, commendavi avo filium meum. adulescentulo praecepi in domo <patris> partibus fungeretur, et, ut plus illi necessitatis imponerem, sententiam vestrae legis ingessi. denuntiavi postremo futurum ipsius crimen, si non patri paruisset et legi. *Adulteram,* quae per insanam libidinem stimulis tanti furoris exarserat ut nec suos agnosceret, interemit. *Peregrinus* esse filius meus post adulterium matris suae coepit. "*Occidit,*" inquit, "filiam meam." grave est, tribuni, in servitute defendere quod in libertate commiseris. *Merito* mulier suos iam negabat esse quos laeserat. ipsa post tantum furorem iam sua non erat. *Illa* dixit, "meus non est," at ego dico, "meus est." mater armatum timuit, sed pater servientem, quod est maius, agnoscit.

24. Indemnatus Carnificem Recusans

lege indemnatorum interficiendum pater filium carnifici tradidit. ille vult manu patris interfici. pater ipse, qui fuerat

He is led off to crucifixion by this same man. After he returned from abroad, the man who was his apparent legal father appeals to the tribunes on the grounds of unjust punishment.

(Speech of the foreigner [i.e., the father])

After I had only just returned to my native land (if, in spite of what my opponents say, they concede that this is even my native land), I was preparing to lodge an appeal with you, the tribunes, when his plight became known to me, on the grounds of my son's unjust punishment of slavery. *But* while my father-in-law rages on in such a way that he wishes to acknowledge as his own neither his son-in-law nor his grandson, let him grant even to me an excuse for my indignation if I do not fail in my duty to a son who is entitled to proper treatment from me, and entitled to proper treatment from the laws, when he himself seeks to exact vengeance for his daughter, even though she is the guilty party. I myself married this man's daughter in accordance with our laws, and together we saw her become pregnant, and we both counted out the ten months while the child was unborn, and we also acknowledged the son she bore as the fruit of our wedlock. *But* when an unavoidable trip abroad was going to call me away, I entrusted my son's safety to his grandfather. I instructed the young man to function in <his father's> role in our household, and, to impose upon him a more powerful sense of his required duties, I forced repeatedly to his attention the decree of your law. Last of all, I duly warned him that he would be subject to censure if he had failed to obey his father and the law. *He* killed an adulteress who, through her insane passion, had become inflamed by the intoxication of such great delirium that she did not recognize her own family. *My* son began to be a foreigner after his own mother committed adultery. "*He* killed my daughter," my opponent tells us. Tribunes, it is a serious and difficult matter to defend while in servitude what you have become liable for in freedom. *With* good reason the woman at this stage kept denying that it was her people whom she had harmed. In the aftermath of such great insanity she was herself even then totally out of control. *That* woman said, "he's not my legal son," but I for my part say, "he is my legal son." The mother feared an armed man, but a father acknowledges as his own a man serving as a slave, and this is something which carries more weight.

24. The Son, Not Found Guilty in a Court of Law, Who Opposes the Use of a Professional Executioner

The Situation: A father handed over his son to be killed, in accordance with the law concerning those condemned without a trial, to a professional executioner. The son wants to be killed by his father's hand.

offensus, ultro se non posse facere quod coeperat confitetur.

Quam morigerum sibi filium senex iste formarit, nolo aliud indicium quam quod, ne patrem laedere<m>, nec mortem recusavi[t]. *Mori* iussus adulescens in primis adhuc annis, quo tempore et vita carissima est et mors acerba, non quaero vitam. si potest, feriat hostiam quam dis penatibus vovit; satis sibi faciat meo sanguine; immo et ipse suo, dummodo ne per manum vilem ius pietatis infuscet: quia nec iuris ratio permittit ut adhibeatur adversum eum carnifex, in quem non fuit iudex. *Faciat* vitae finem qui originem fecit. non de morte cum patre sed de mortis [patris] genere dissentio. eripere vis vitam quam dedisti; non infitiabor. quid per alterum petis? ius quod tibi vindicas, experire; nemo te prohibet. occide, si potes; confitere, <si> non potes. *Nemo* umquam magistratum fecit vicarium nec in alio militavit nec sacra gentilicia insitiva stirpe corrupit. *Vita* mihi tollitur, sed manus paterna debet<ur>. non potes, pater, legis eiusdem et inrogare supplicium et denegare solacium. *Placabo* dexteram meam; cedo tantisper exosculer. o manus olim mea, quae me parvulum saepe gestasti, quam saepe lacrimis puer lavi! *Erras,* pater, qui facilius existimas huiusmodi caedem videre quam facere.

25. Fortis Duo Praemia

Viro forti duo praemia. Raptarum lex. Poena raptoris in diem tricesimum differatur. Ex duobus fratribus unus rapuit. rapta mortem optavit. poena dilata est. alter fortiter fecit. primo praemio petit fratris incolumitatem. impetravit. secundo raptae mortem postulat. frater contradicit.

Dum dies computo et a rapta bonum nuntium spero, subito

The father, for his part, who had been met with ill-success in this, freely admits that he is unable to finish what he had begun.

(The son's speech)

I desire no other evidence of how obedient to himself that old men here raised his son than this: in order not to offend my father, I did not even oppose the death penalty. *Although* ordered to die while a young man in those early years when life is so precious and death is premature, I do not ask for my life. If he is able, let him slay the sacrificial victim which he has vowed to our household gods; let him be content with my blood, yes, for his part, even with his own flesh and blood, provided that he does not corrupt the obligations of justice and our family ties by the hand of a contemptible man: the reason is that our system of justice does not allow an executioner to be called in against a person who did not face a judge. *Let* the man who originated my life terminate it. I do not disagree with my father about my death, but about the nature of my death. You wish to take away the life which you gave me; I will not deny it to you. But why do you pursue it through a second party? Resort to the law which you claim as your basis; nobody is stopping you. Kill me if you can; confess it <if> you can't. *Nobody* ever acted as a substitute magistrate or performed military service in another person's name or tampered with a family's sanctity of inheritance through grafted on stock. *Life* is taken from me, but my father's hand is owed to me. Father, you cannot both propose the same law's execution and deny me its consolation. *I will* soothe your right hand that is owed to me; come, give it to me to kiss fondly for the present. Oh hand, formerly my friend, which often carried me about when I was a little baby, which as a boy I often bathed with my tears! *Father,* you are mistaken if you think that you can more easily look on a slaughter of this sort than perform it.

25. The War Hero's Two Rewards

The Laws: (1) A war hero shall receive two rewards. (2) The law concerning raped women. (3) The punishment of a rapist shall be postponed to the thirtieth day.

The Situation: One of two brothers committed a rape. The raped woman called for his death. The execution was deferred. The other brother fought heroically. As his first reward he asks for his brother's immunity. This he obtained. For his second he demands the death of the raped woman. His brother opposes this.

(Speech for the rapist)

While I am counting off the days and anticipating some good news

nuntiatur fratrem meum venisse victorem. petitam mihi et
veniam putavi pariter et nuptias. *Nec* dii sinant ut, converso
iure, pro raptore rapta teneatur. *Interdum* praestat ad gloriam
non certare quam vincere. *Ego* nisi rebus ipsis ostendo quod
H. 24.10 amavi, confiteor iniuriam me fecisse quod rapui. *Lex* dicit:
"raptor aut pereat aut ducat." *Ergo* raptori si poena dimittitur,
rapta[e] debetur.

26. Tria Praemia Sacerdotis

Viro forti praemium. Vicarium poenae liceat offerre.
H. 24.15 Sacerdos Martis damnatum liberet. Sacerdos Martis fortiter
fecit. tres liberi eius deseruerunt. unum servavit privilegio
sacerdotis, alterum praemio viri fortis. offert se pro tertio
vicarium.

Facilius fuerat amittere filios quam eligere. *Hos* enim pueros
in ipsis sacris deum et altaribus educavi. ea propter nimis fretus
H. 24.20 auxiliis deorum in aciem duxi pueros adhuc teneros, quorum
pater adeo iuvenis inventus est ut et militare posset et vincere.
Resisto orbitati non iure vel sanguine? *Dulcis* est omnibus
vita et iucunda vel miseris huius lucis usura; nec invenio quis
possit vicarius esse nisi filii. mihi videtur et ille qui primus
hanc condidit legem nihil aliud cogitasse quam patrem. *Meum*
nunc sanguinem fundo quem fundere in bello volui. num
iniquum est, aeque ut patiar pro liberis meis quod sum passus
H. 25.5 paene pro vestris? *Magis* religio polluitur funestato quam
mortuo sacerdote. quod si religio vos tenet, etiam liberis
sacerdotis moneo parcatis: ipsi quoque omnia semper in templo
pro sacerdote gesserunt. *Agricolae* antiquas arbores exstirpant
H. 25.10 ut novas inserant; horum virtus spectabitur, nostra delabitur.
melior quidem fama seniorum; spes tamen minoribus maior

from the raped woman, suddenly there is the announcement that my brother has arrived, victorious in battle. I supposed that he had asked simultaneously for both my pardon and my marriage. *God* forbid that, with justice turned topsy-turvy, the raped woman should be held liable for punishment instead of the rapist. *To* achieve praise and glory sometimes it is better not to fight than to win a victory. *Unless* I myself make clear by my actual deeds that I loved her, then I confess that I have committed a sexual assault in that I raped her. *The* law reads, "a rapist should either die or marry." Therefore, if a rapist is released from the punishment, the raped woman is his due.

26. The Priest's Three Rewards

The Laws: (1) A war hero will receive a reward. (2) One may offer [one's self as] a substitute for punishment. (3) A priest of Mars may free a condemned man.
The Situation: A priest of Mars fought heroically. His three sons deserted. He saved one through his special privilege as a priest, the second through his reward for heroism. He offers himself as a substitute for the third.

(Speech of the priest)

To lose [all] my sons would have been easier than to make a choice. *I did* indeed bring up these boys amid the actual holy places and the altars of the gods. Influenced by these considerations, relying too much on the assistance of the gods, I led off to battle boys still immature, yet whose father was found to be such a vigorous man that he was capable of both serving as a soldier and winning a victory. *Have* I not the right to intervene against the loss of my children, even with my own blood? *Life* is sweet to everyone, and the enjoyment of this existence is pleasant even to those who are suffering, and yet I do not find anyone who can [better] act as a substitute victim, if not I for my son. It seems to me that the particular man who first framed this law also intended no other eventuality than a father [as a substitute]. *I now* shed my own blood which I intended to shed in the war. It's not unfair, is it, that I suffer equally in behalf of my children what I nearly suffered in behalf of yours? *Our* religious scruples are violated more by a priest polluted with murder than by a dead priest. But if religious scruples still hold you back, I warn you to spare a priest's sons on this count as well: these sons also, acting independently, always performed all the functions in a priest's capacity. *Farmers* uproot old trees in order to plant new ones; my sons' valor is to be looked forward to, but mine is slipping away. The renown of older men is indeed better, but nevertheless in younger men the promise is greater. *The* recollection of a favor is a

est. *Recordatio* veniae magnus est stimulus industriae. *Non*
interest, orbitas, uno me vulnere ferias an pluribus. *Dedisti*
mihi liberos, fortuna; rapies? concedit alios res publica; nec
H. 25.15 hunc relinques? *Quis* me feriet? carnifex innocentem, an
commilito laureatum? ubi denique? hic, inter aras et altaria
ubi publica vota suscepi, an in campo, ubi nuper aquilas et
signa protexi? *Vos,* duo liberi, omnibus in vita bonis, hunc et
ipsi vitae meae praefero. factus est mihi suo periculo carior,
sed et meo: vos mihi honore[m] praestantes, hic sanguine. *Si*
H. 25.20 mihi non licet pro filio, peribo cum filio.

27. Fortis Inimicum Divitem Servans

Viro forti praemium. Desertor capite puniatur. Pauper et dives inimici. belli tempore dives se promisit fortiter facturum si sibi mors pauperis decerneretur. decreta est. ambo processerunt in proelium. pauper fortiter fecit, dives deseruit. petit pauper praemio divitis incolumitatem. dives contradicit.

Sero coepit hic miles, iudices, mortem contemnere. *Ego* tacui
cum peterer; hic vivere iubetur et queritur. *Expectavi* diu
H. 26.5 divitem ut ille potius, quod promisit, impleret. *Ab* ipso quoque
divite inire debeo maximam gratiam: quod ille debebat, ego
solvi. *Idem* in praemio facio quod in proelio: servo civem,
commilitonem meum protego. *Idem* eris in aevum, qui semper
adhuc fueris.

H. 26.10 28. Dives Fortis Inimicus Duorum

Dives duobus pauperibus inimicus. promisit se fortiter facturum si sibi mors unius decerneretur. decreta est. alter C. D. dives fortiter fecit. petit praemio mortem illius qui

great incentive to industry. *It* makes no difference, this loss of my sons, whether you strike me with a single blow or with several. *Oh* Fortune, you have granted me children; will you now snatch him away? The state grants me the others; won't you leave me this one? *Who* will strike me down? Will an executioner kill an innocent man, or a fellow soldier a decorated hero? And if it comes to that, where? Here amid the altars and burnt sacrifices where I have presided over the offerings of our people, or in the field where I recently defended the sacred images of our eagles and our military standards? *You,* my two sons, I prefer to all the good things in life, but this one here I prefer to my very own life itself. He has become dearer to me because of his own peril, but also because of my own: you, having the advantage because of the privileges accorded to me; this one, because of my blood. *If* I may not die in place of my son, I will die along with my son.

27. The War Hero Who Saves his Rich Enemy

The Laws: (1) A war hero shall receive a reward. (2) A deserter shall be executed.
The Situation: A poor man and a rich man were enemies. In war time the rich man guaranteed that he would fight heroically if the state would decree to suit his wishes the death of the poor man. It was so decreed. Both men went off to battle. The poor man fought heroically, but the rich man deserted. The poor man requests as his reward the rich man's immunity from punishment. The rich man opposes this.

(The poor man's speech)

Gentlemen, it was too late for this soldier to start despising death. *As* for me, I kept silent when his assault was being directed against me; this man is being commanded to live and yet he complains about it. *I waited* too long a time for the rich man to fulfill his promise instead of me. *I also* ought to win special gratitude from the rich man himself: yes, I fulfilled that man's obligation. *I am* doing the same thing in the matter of the reward that I did in the war: I am saving the life of a fellow citizen, I am protecting my fellow soldier. *You* will forever be the same kind of person, you who have always been so up to now.

28. The Rich War Hero, the Enemy of Two Poor Men

The Situation: A rich man was on bad terms with two poor men. He promised that he would fight heroically if the death of one of the poor men was decreed to suit his wishes. It was so decreed. The other poor man had spoken in opposition to this. The rich man fought heroically. He seeks as his reward the death of the poor man who had spoken in

contradixerat. alter C. D.

H. 26.15 *Ego* quidem verba facturus in alterius periculo nuper in meo tacui, cum praemium peteret iniustum qui per leges necdum posset petere vel iustum. *Per* tot innocentium capita grassatur: hunc relinquit, hunc arripit; hunc timore punit, hunc morte.

29. Fortis Dives Inimici Alteram Filiam Petens

H. 26.20 Pauper et dives inimici. pauperi duae filiae. belli tempore promisit se dives fortiter facturum, si in matrimonium sibi pauperis una filia daretur. populus tacente paupere decrevit. dives fortiter fecit. puella se interemit. petit dives aliam. pauper C. D.

Priusquam fortiter faceret, postulavit, confisus id sollicito
extorquere se populo quod impetrare a victore non posset.
Ducat dives aliquam, sed aequalem; ducat volentem. *Velis* enim
nolis, suspecta res est amator inimicus. squalor et maeror,
gemitus et luctus: inimici filia talis adamatur? pauper et dives:
H. 27.5 iniquum est matrimonium. ne pecora quidem iugum nisi paria
succedunt. *Ego* autem quid faciam? laqueum filiae solvam,
an flammeum superponam? facem nubenti praeferam, an
rogum iacentis accendam? *Aliter* enim merces in timore
promittitur, aliter honos in pace praestatur. *Festinabit* ad
H. 27.10 laqueum; properabit ad mortem. non creditis patri? credite
vel sorori. si vicerit, ad patrem revertetur; si victa fuerit, ad
sororem.

opposition to him. The other poor man speaks against this.

(The poor man's speech)

Yes, it is true, I who am going to speak during another's time of peril, recently kept quiet during my own, when a man, who, according to the laws could not yet seek a reward—even a lawful one, was seeking an unlawful one. *The* man rages in succession against the same small number of innocent individuals: this man he ignores, that man he has arrested; this man he punishes with fear, that man he punishes with death.

29. The Rich War Hero Who Seeks the Hand of his Enemy's Second Daughter

The Situation: A poor man and a rich man were enemies. The poor man had two daughters. In war time the rich man guaranteed that he would fight heroically if one of the poor man's daughters was given to him in marriage. While the poor man kept his silence, the state so decreed. The rich man fought heroically. The girl committed suicide. The rich man asks for the hand of the other daughter. The poor man speaks in opposition.

(Speech against the rich man)

Before he fought heroically, he made his demand, confident that he could extort from an anxious state something which he could not obtain from a victorious one. *Let* the rich man marry some other woman, but one his equal in rank, let him marry one who is willing. *Of* course, whether you like it or not, the situation reeks with suspicion when her father's personal enemy is her ardent suitor. See my filthy dress and grief, my moaning and my mourning: is the daughter of your enemy, a man such as this, the object of your passionate love? There's a poor side and a rich one: the marriage is a bad match. Not even livestock are yoked together unless they make a good pair. *As* for me, what should I do? Shall I slip open my daughter's noose or shall I place over her the fiery colored wedding veil? Shall I hold up the torch in front of her as she gets married, or shall I kindle the pyre for her dead body? *In* one way, of course, a bribe is promised in a time of fear, in the other, a mark of special distinction is furnished in a time of peace. *She* will hurry for the noose; she will hasten to her death. You don't believe her father? Believe her sister, if you prefer. If she wins the case, she will go back to her father; if she doesn't win, back to her sister.

30. Nepos ex Meretricio Susceptus

Qui habebat filios frugi et luxuriosum, <luxuriosum> ob amore<m> meretricis abdicavit. abdicatus se ad meretricem contulit. illic cum aegrotare coepisset, misit ad patrem et commendavit illi filium de meretrice susceptum, rogans ut eum in familiam recipiat, et obiit. vult illum senex in familiam recipere. reus est alteri filio dementiae.

Necesse est me hodie in hac causa amplius dolere quam dicere. *Pius* est sine dubio filius qui in patre mentis errorem morbo potius assignat et fato quam moribus. miseranda potius in meo patre quam accusanda dementia est. *Multum* potest abdicatio cum timetur; post ex pudore iam liberius erratur. *Vos* interrogo, iudices, utrum sit sanus qui et suos abdicat et adoptat alienos. *Adoptio* sancta res est; quidni, quae beneficia naturae et iuris imitatur. *In* quo puero nescio quid sit indignius, utrum patris origo, quod est dubia, an matris origo, quod certa est. *Dixit* ille suum filium; dixit ut amator; dixit immo ipse iam parum sanus.

31. Adulterae Soror et Mater

Et matres et sorores in adulterio deprehensas liceat occidere. Quidam cum sororem deprehendisset, occidit. furorem passus resipiit. invenit et matrem. non occidit. abdicatur a patre.

Soror erravit, insaniendum est; mater adulteravit, domo patria carendum est. *Hic* exitus venit, ut, ex quo malo furor coeperat, ex eo sanitas nasceretur. *Voluit* me explorare fortuna an agnoscerem meos. *Si* haec poena adulterae, quod pudori super? *O importuna* sanitas, ideone redisti, ut mihi adulterium

30. The Grandson Acknowledged as Legitimate From a Liaison With a Prostitute

The Situation: A certain man who had two sons, one sober-minded, the other dissolute, disinherited <the dissolute son> because of his love affair with a prostitute. The disinherited son moved in with the prostitute. After he had started to become ill there, he dispatched to his father and commended to him the son that he had acknowledged of the prostitute, requesting that he take him into the family, and then he died. The old man wants to take him into the family. His other son charges him with insanity.

(Speech against the father)

In this case today I must spend more time commiserating than communicating. *Undoubtedly* it is a devoted son who, in dealing with his father, attributes his mental lapse to illness and fate rather than to his character. In my father's case his insanity should be pitied rather than pilloried. *Disinheritance* has a great deal of power when it is feared; but afterwards one strays by then rather freely from the bounds of modest behavior. *Gentlemen* of the jury, I ask you whether a man is sane who both disowns his own flesh and blood and adopts strangers. *Adoption* is a sacred process; of course it is, one which duplicates the privileges conferred by birth and statute. *But* in the case of such a boy, I don't know what is more scandalous, his paternal line, because it is doubtful, or his maternal line, because it is certain. *He* said it was his son; he said it as a man in love; he said it, to be more precise, when he was already himself hardly sane.

31. The Mother and Sister Who Commited Adultery

The Law: One may kill both mothers and sisters caught in the act of adultery.

The Situation: When a certain man caught his sister in the act, he killed her. After suffering from insanity, he came to his senses again. He also discovered his mother in the act. He did not kill her. He is disowned by his father.

(Speech for the son)

My sister went astray, I was forced into insanity; my mother committed adultery, I was forced to leave my father's house. *The* upshot was that my sanity arose from the very evil from which my madness started. *Lady* Luck wanted to put me to the test to see whether I would recognize the members of my own family. *Suppose* that this is the punishment for an adulteress, that she survive her disgrace? *Oh* sanity, coming at the wrong time, have you returned for this reason, to disclose to

matris ostenderes? *Abdicatus* hic iterum quasi furiosus errabo, sed certe sine mente secura.

32. Desertor Pater Oratoris et Militis

Qui filios habebat unum oratorem, alterum militem, reus proditionis factus est. pendente iudicio miles fortiter fecit. petit praemio abolitionem iudicii. contradicit frater orator.

Quemadmodum vixerit pater, apparet in liberis. *Publicae* utilitatis est omnium reorum iudicari causas ne aut nocens evadat poenam aut innocens patiatur infamiam. *Gloria* quantum nobis honoris attulerit, tantum virtutis exposcit. *Innocentiam* patris dum liberare quaeris, infamas. homini verecundo in eiusmodi crimine longe gravior est fama quam poena. *Vetus,* iudices, dictum est, ut aurum igni, itidem innocentiam iudicio spectari solere. *Melius* est patri virtutum tuarum argumento te prodesse quam praemio.

33. Amator Meretricis Dominae

Meretrix servum suum amantem se in crucem agit. appellat tribunos ille de iniusto supplicio.

Miror quidem a muliere tam comi crucis nomen auditum, quae nullum umquam nisi amore cruciaverit. *Amor* animi peculiare secretum est. *Accusatur* a nobis amor, et homo qui deum nostrum patitur? *Esset* meum crimen, aut error, si te solus adamassem.

34. Raptam Pater Vinculis Tenens

Rapta raptoris mortem aut indotatas nuptias petat. Raptam

me my mother's adultery? *Disinherited,* at this point practically out of my mind once again, I will wander about, but certainly without a mind free from fear.

32. The Deserter Who Was the Father of an Orator and a Soldier

The Situation: A man who had two sons, one an orator, the other a soldier, was accused of treason. While his trial was pending, the soldier fought heroically. He seeks as his reward the cancellation of the trial. His brother, the orator, speaks in opposition.

(Speech of the orator son)

It is obvious from my father's children how he conducted his life. *It* is conducive to the public interest for the cases of all defendants to go to trial so that neither does any guilty party escape punishment nor does an innocent one suffer infamy. *His* glory will confer as much respect on us as it demands of our steadfastness. *While* you are seeking to have the charges dropped, you are smearing our father's innocence with suspicion. For a man with any self-respect, in a charge of this sort his reputation weighs more in the balance than any punishment. *There's* an old saying, gentlemen, that just as gold is customarily tested by fire, so is a man's innocence by a trial. *It* is more fitting for you to help Father by a proof of your merits than by the reward.

33. The Slave in Love With his Owner, a Prostitute

The Situation: A prostitute leads off to crucifixion her slave who is in love with her. This man appeals to the tribunes for intervention on the grounds of unjust punishment.

(Speech of the slave)

I am indeed amazed that the term "crucifixion" has reached the ears of a woman so obliging that she never crucified anyone—except in love. *The* love here in my heart is the personal and private account of a slave. *Are* we charging Cupid with a crime—and also a man who submits to this god of ours? *It* would be a crime on my part, or a moral lapse, had I been the only man to fall passionately in love with you.

34. The Father Who Kept his Raped Daughter in Forced Confinement

The Law: A raped woman may ask for the death of the rapist or marriage to him without a dowry.
The Situation: A father keeps his daughter in forced confinement after

pater vinculis continet; raptor duci ad magistratus desiderat.

H. 29.20 *Nihil* equidem leges clementius paraverunt quam quod de lege raptarum non licet alii iudicare. medius his nemo est. sum reus, sed exhibe iudicem meum! *Pro* deum atque hominum fidem! in qua civitate raptor solutus est? in ea rapta vincitur!

35. Mater et Noverca Invicem Reae

Repudiata est a marito quae filium habebat. petit assidue ut
H. 30.5 reconciliaretur. non impetravit. postremo ait, "vindicabo me." superduxit ille puero novercam. obiit puer signis ambiguis cruditatis et veneni. reas se invicem faciunt repudiata mater et noverca superducta.

H. 30.10 *Totum* noverca commisit quae uno tempore et maritum miserae praeripuit et filium. *Comparate,* iudices, non ante rerum argumenta quam nomina. quid matri deliquerat filius? neque enim temere sic filius de levi causa quasi privignus occiditur. "*Repudiata* es," inquit. mariti haec culpa, non filii est, nec matris officium repudio deponitur, sed uxorium nomen
H. 30.15 amittitur. *Dolor* orbitatis conscientia facinoris augetur, et, si grave est amittere filios, longe gravius occidere. *Nonne* hoc dicit: "sola dominabor, cum et hic veneno meo perierit et illa mendacio"? *Iudicasti,* pater, qui et repudiatam non accusando absolvisti et uxorem novam non defendendo damnasti.

H. 30.20 36. Speciosus Desertor

Desertor duci serviat. Viro forti praemium. Pauper et dives inimici. dives creatus est imperator. pauper sub illo cum filio

she was raped; the rapist wants her to be brought before the magistrates.

(Speech for the rapist)

The laws have indeed provided nothing more humane than their dictate in the statute concerning raped women that no outsider may settle such a case. There is no arbitrator for the parties directly concerned here. I am the guilty culprit; now produce my judge! *By* God and all that is holy! In what kind of state is a rapist a free man? In one where the rape victim is kept imprisoned!

35. The Mother and Stepmother, Who Each Accuse the Other [of a Son's Murder]

The Situation: A husband divorced a woman who bore his son. She continually kept asking for a reconciliation. She did not succeed in her requests. At last she said, "I'll get my revenge." The man brought home a stepmother for his boy to succeed the previous wife. The boy died with uncertain symptoms suggesting indigestion or poisoning. The divorced wife and the stepmother who replaced her each accuse the other.

(Speech for the natural mother against the stepmother)

The stepmother, who simultaneously snatched away from an unfortunate woman both her husband and her son, put together this entire plot. *Gentlemen* of the jury, don't evaluate the motives for this business before you evaluate the family designations. In what way had the son wronged his natural mother? A natural son is certainly not killed so impetuously for a trivial reason as is a stepson. "*You* were divorced," the opposition says. This is the husband's fault, not the son's, nor are her obligations as a mother abandoned because of divorce—she just loses the title of wife. *Her* grief at the loss of a child increases with the private knowledge that a crime was committed, and, if it is a formidable matter to lose sons, it is a far more formidable one to murder them. *Isn't* she really saying this: "I alone will be mistress of the household, since both this son here has been destroyed by my poison, and that woman there by my lies"? *You,* the father, have passed judgment, you, who have both acquitted your divorced wife by not accusing her, and condemned your new wife by not defending her.

36. The Handsome Deserter

The Laws: (1) A deserter shall become his commander's slave. (2) A war hero shall receive a reward.

The Situation: A poor man and a rich man were enemies. The rich

specioso adulescente militavit. pauper fortiter fecit; adulescens deseruit. dives iure + agit; pater praemio petit ut occidatur.

Filium meum si liberare non licet, saltem liceat occidere. *Creditis,* iudices, quod filio meo bene inimicus velit, pater nolit? profiteor mortem me filii mei non quidem velle, sed malle. *Vos* cogitate quanto sint mala illa graviora quorum sunt etiam remedia crudelia. *O fili,* morere constanter! fac hoc saltem quasi meus filius!

37. Filius Meretricis Suae Redemptor

Diversas meretrices amabant pater et filius. pater filio pecuniam dedit ut amatam patris redimeret. ille suam redemit. abdicatur.

Rideri me, iudices, opinabar a patre, cum se quoque amare dicebat. pater quod patior agnoscit! *Quid* in me pater reprehendat, ignoro: et amandam meretricem consentit et emendam. *Sciebas* utique quid mallem. *<Im>paria* sunt nobis in amore tormenta: primum quod amor, velis nolis, in senectute frigidior est.

38. Dementiae Reus a Tribus Filiis

Ex tribus filiis duo patrem dementiae accusaverunt et superati secundum legem puniti sunt. tertius instituit accusare. reddit pater causam mortis voluntariae. filius C. D.

Quid tam potest esse <di>versum? eius hic ab eo mors impeditur cuius in altero iudicio vita reprehenditur? *In* illis, P. C., iudiciis gravior mihi fuit vindicta quam poena. *Mors* a vobis dabitur sive dementi remedium sive sapienti solacium.

man was appointed commander of the army. The poor man served as a soldier under his command along with his handsome young son. The poor man fought heroically, but the young man deserted. The rich man + institutes a proceeding according to the law, while the father seeks as his reward that his son be executed.

(Speech of the father)

If I may not free my son, please at least allow his execution. *Gentlemen* of the jury, do you suppose that my enemy wishes my son well, but that his father doesn't? I hereby declare that I certainly do not desire my son's death, but I do prefer it. *Imagine,* yes you, how much more serious those misfortunes are whose remedies are likewise so savage. *Oh* my son, die resolutely! Do this at least as though you are my son!

37. The Son Who Bought the Freedom of his Mistress

The Situation: A father and a son were conducting love affairs with different mistresses. The father gave his son money to buy the release of the one loved by the father. The son bought the release of his own mistress. He is disinherited.

(Speech of the son)

I kept thinking, gentlemen of the jury, that my father was making fun of me when he kept saying that he also was in love. My father fully appreciates what I am suffering through! *I fail* to comprehend what my father is criticizing in my behavior: he agrees that a mistress should be both an object of passion—and purchase. *You* knew all along exactly what I would prefer to do. *We* have <un>equal torments in love: in the first place because, whether you like it or not, your sexual passion is more frigid in old age.

38. The Man Accused of Insanity by his Three Sons

The Situation: Two of three sons accused their father of insanity and, after they lost, were punished according to the law. The third son instituted an accusation. The father states his case for committing suicide. The son opposes this.

(Speech of the father)

What can possibly be so <inconsistent>? The man whose life is censured in one trial is here being prevented by him from dying! *In* those previous legal proceedings, senators, my vindication was a more painful burden for me than the punishment. *You* will grant me death whether as a remedy for an insane man or as a relief for a rational one. *Nature*

H. 32.5 *Natura* mihi tres liberos dedit, fortuna[que] duos sustulit.
videturne vobis iusta causa esse moriendi? immo iam sera.

39. Fortis Viri Filius Tyranno Deditus

Absentis viri fortis filium tyrannus petit sibi dedi denuntians
bellum. accepit. regresso eo suadetur bellum tyranno indici.
H. 32.10 vir fortis contradicit.

Profiteor me filium nec desiderare nec habere. *Nescio* an hoc
bellum fuerit in tempore suo iustum; nunc certe coepit esse
iam serum. "*At* enim filius viri fortis est." quid? hoc non erat
cum dabatur? *O fili,* si tamen hoc nomen quod natura dedit,
H. 32.15 fortuna non abstulit, agnosce te filium viri fortis; vince feliciter,
id est peri fortiter! haec est enim tua iam sola victoria.

40. Morietur Antequam Nubat

Veneficii sit actio. Adulescens petit nuptias virginis a patre.
pater virginis ad uxorem retulit. illa respondit: "ante morietur,
H. 32.20 quam illi nubat." pater eidem adulescenti despondit et diem
nuptiis dixit. intra diem puella obiit dubiis signis cruditatis et
veneni. quaestionem cum de familia pater haberet, ex ancillis
una confessa est adulterium cum illo iuvene matris intercessisse.
pater accusat veneficii matrem.

Quaeritur filiam cruditate an veneno interfeceris, nam et
H. 33.5 cruditas virginis crimen est matris. "*Morietur* ante quam
nubat," et mortua est. o impiam divinationem vel potius
denuntiationem! o infelix puella! ego tibi parabam nuptias,
mater exequias. *Placuit* in te sponso tuo similitudo materna.
Ego te, fateor, occidi, dum cum matre contendo.

granted me three children; fate stole away two. Doesn't this seem to you to be a legitimate reason for dying? Yes, indeed it is, one already too late in coming.

39. The Hero's Son Who Was Surrendered to a Tyrant

The Situation: Threatening war otherwise, a tyrant demands that the son of an absent war hero be surrendered to him. He got the son. When the hero returned, a proposal is made that war be declared on the tyrant. The war hero opposes this.

(Speech of the war hero)

I frankly declare that I neither want my son back—nor do I have one. *I don't* know whether this war would have been a just one at its own proper time; surely here and now it has begun already to be one past its proper time. "*Yes,* but he is the son of a war hero." What do you mean? Wasn't he this when he was given away? *Oh* my son, if indeed this title which your birth has given you, death has not taken away, realize that you are the son of a war hero; prevail, and good luck about it; that is to say, die, and be a man about it! Indeed now this is the only way you may prevail.

40. "She Will Die Before She Gets Married"

The Law: Poisoning is an actionable crime.
The Situation: A young man asks the father of a young woman for her hand in marriage. The father of the young woman brings the news to his wife. She replies: "She will die before she marries him." The father promised her in marriage to this same young man and set the date for the wedding. Before the appointed day the girl died with doubtful symptoms suggesting indigestion and also poisoning. When the father was conducting an interrogation by torture of the household servants, one of the slave girls confessed that an adulterous relationship existed between the mother and the young man in question. The father accuses the mother of poisoning.

(Speech against the mother)

The charge being tried is whether you killed your daughter by indigestion or by poisoning, for a young woman's indigestion is also chargeable to her mother. "*She* will die before she gets married," and then she died. Oh what a wicked prognostication—or, more correctly—prenotification! Oh you unfortunate girl! I was making your wedding arrangements, your mother your funeral arrangements. *Your* fiancé found your resemblance to your mother attractive in you. *I confess* it, I killed you while arguing with your mother.

H. 33.10

41. Rapta ab Ephebo Stuprata

Raptarum lex. Rapuit quidam virginem et ephebo, quem amabat, tradidit stuprandum. rapta ad magistratus producta mortem ephebi petit. offert se ille qui rapuit.

Ego, iudices, rapui, ego domum duxi, ego pariter inclusi, ego
H. 33.15 vim duobus feci. *Perire* mihi satius est quam hunc videre pereuntem. *Callide,* puella, commenta es: unum petis ut duos pariter occidas.

42. Orba Confessa Sacrilegium

Magistratus de confesso sumat supplicium. De iniusto
H. 33.20 supplicio tribunos appellare liceat. Quae quattuor liberos habebat, amissis tribus et marito, detracta est a filio cum laqueum induisset. sacrilegium in civitate commissum est. adiit ipsa magistratus et dixit a se factum. vult de illa supplicium sumere. appellat pro ea filius tribunos de iniusto supplicio.

... cum subito fortuna, sicut solet, ipsa suis muneribus invidit. "*Alius,*" inquit, "pro alio agere non potest." alius est ergo qui
H. 34.5 filius est? *Confessio* voluntaria suspecta est. *Confessionem* sceleris appellas vocem doloris. *Misericordiae* vestrae maximum munus est servare nolentem.

43. Raptor Excaecatus

Talionis sit actio. Raptarum lex. Quidam rapuit et in raptu a
H. 34.10 puella excaecatus est. producta ad magistratus mortem optavit. raptor exigit talionem.

41. The Girl Who Was Abducted, Then Violated by a Youth

The Law: The law dealing with raped women.
The Situation: A certain man abducted a young lady and handed her over to be sexually violated by a youth with whom she was in love. When brought before the magistrates the girl who was carried off seeks the death penalty for the youth. The man who carried her off offers himself instead.

(Speech of the abductor)

I myself abducted her, gentlemen of the jury, I brought her home, I confined them together, I inflicted a grievous wrong on the two of them. *It* is better for me to die than to see this man die. *You* contrived this cunningly, my girl: you take aim at the life of one so that you can kill two birds with one stone.

42. The Bereaved Woman Who Confessed to Sacrilege

The Laws: (1) A magistrate may exact punishment from a person who has confessed to a crime. (2) One may appeal to the tribunes for intervention in a case of unjust punishment.
The Situation: A woman had four children. After having lost three of them and her husband, she was taken down by her son when she had tried to hang herself. Someone committed an act of sacrilege in the city. The woman voluntarily approached the magistrates and said that she had done it. [A magistrate] wants to exact punishment. Her son appeals on her behalf to the tribunes for intervention on the grounds that this constituted unjust punishment.

(Speech of the son)

... when unexpectedly good fortune, of its own accord, as it usually does, became jealous of its own gifts. *The* opposition says, "a person not concerned with the case cannot speak in behalf of another." Is it true then that one who is her son is not concerned with the case? *The* confession is voluntary—but suspect. *One* properly terms her confession of the crime the voice of her grief. *The* most generous exercise of your compassion is to save her against her will.

43. The Blinded Rapist

The Laws: (1) An action may lie to exact retribution in kind. (2) The law dealing with raped women.
The Situation: A certain man committed a rape and in the course of the rape he was blinded by the girl. When brought before the magistrates she asked for his death. The rapist demands retribution in kind.

Imperare poenam meam, non agere debebas, nec esse eadem iudex et carnifex. *Habet* quisque nostrum suam legem: rapta capitis, excaecatus oculorum. *Tu* enim, puella, quid passa es?
H. 34.15 virginitate caruisti. sollemne in his <annis> damnum, ut non dixerim votum. erepta autem mihi lux est ante quam morerer. *O oculi* <quibus> ego primus adamavi! digna fortuna vos ulta est, ut, qui me perdidistis, mecum periretis.

44. Soror Infamis Immolanda

H. 34.20 Infamis erat in sororem virginem. occisus est lege indemnatorum. lues orta est. respondit oraculum virginem immolari debere. offert se illa quae infamabatur in fratrem. pater C. D.

Dilexerunt enim se mutuo fratres ultra meum votum. *O fortuna* crudelis! abstulisti mihi filium; relinque vel filiam. partiamur
H. 35.5 vel saltem liberos meos. *Nemo* de polluto grege hostiam sumit. *Quis* hanc hostiam perimet; pater, sacerdos, an carnifex? quamvis haec fortasse desideret ipso illo gladio perire quo frater occisus est.

45. <Speciosus Filius a Patre Peremptus>

H. 35.10 Indemnatos liberos liceat occidere. Tyrannus finitimae civitatis sub minis belli adulescentem speciosum postulavit. civitas decrevit. pater illum lege indemnatorum peremit. reus est laesae rei publicae.

Amplius reges impossibilia desiderant. interemi iam mori
H. 35.15 volentem et commodavi misero manum. *Feci* quod licebat: occidi filium. sed ingens pater praemium retuli: occisus est ante quam moreretur. perit homo, sed pudor vivit.

(Speech of the rapist)

You ought to have demanded my punishment, not enacted it, nor ought you, the same woman, to have been judge and executioner. *Both* of our sides possesses its own legal recourse: the raped woman may have the loss of my head; I, blinded, may have the loss of her eyes. *For* what did you have to put up with, girlie? So you lost your virginity. It's a customary loss in these <years>, not to say a fervent wish. But my vision was snatched away from me before I died. *Oh* my eyes, <through> which I first fell in love so passionately! A deserving fate has inflicted retribution on you, so that you who destroyed me will perish with me.

44. The Sister Suspected of Misconduct Who Intends to be Sacrificed

The Situation: A man was suspected of misconduct with his maiden sister. He was executed in accordance with the law dealing with those who can be condemned without a trial. A plague arose. An oracle gave the advice that a maiden had to be sacrificed. The woman who was suspected of misconduct with her brother volunteers. Her father opposes this.

(Speech against the young woman)

The brother and sister indeed loved each other more than I would wish. *Oh* cruel fate! You have taken a son away from me; leave me at least a daughter. If you like, let us at least share my children. *Nobody* takes a sacrificial victim from a ceremonially impure flock. *Who* will kill this sacrificial victim—her father, a priest, or an executioner? Yet perhaps this girl may long to perish by that very sword which killed her brother.

45. <The Case of the Handsome Son Killed by his Father>

The Law: One may execute children without a trial.
The Situation: The tyrant of a neighboring state, subject to the risk of war, demanded a handsome young man. The state consented. His father executed him in accordance with the law concerning those who can be condemned without a trial. He is then accused of harming the state.

(Speech of the father)

Tyrants too often desire the impossible. I killed him when he already wanted to die, and I lent a hand to my unfortunate son. *I did* what I was allowed to do: I killed my son. But as his father I rendered him a very great reward: he was killed before he could die <by his own hand>.

46. Indemnatus Raptoris Filius

Lex raptarum. Indemnatos liberos liceat occidere. Quidam rapuit et fugit. de raptu puella concepit et peperit. reverso raptore puella mortem raptoris optavit. filium ille indemnatum vult occidere. rapta contradicit.

< ... > nisi forte moleste tulit quod + et non [et] + hunc ipsa H. 36.5 damnavit. *Iam* cum illo meo errore vel fato voluntaria profectione transegeram; hic me, iudices, hic puer prodidit. *Si* perseverat in mea poena, hunc mater occidet. *Dicere* me raptorem nemo debebat post intervallum, post exilium, post meum filium. “non est,” inquit, “filius tuus; nuptiis enim H. 36.10 sollemnibus non est natus.” cuius ergo? nisi faces accenderit et fescennina cecinerit, pater esse non poterit? perquam es inhumana: non vis esse patrem qui te fecerit matrem!

47. Vir Fortis et Orator

Vir fortis et orator consulatum petebant.

H. 36.15 <*num*> vestra iudicia plus ad cuiusque, + <cives>, proficiunt merita privata quam publica? *Postremo,* quod maxime voluntatem plebis offendit, rogare non nosti. orare et exorare nostrum est qui hinc etiam nomen accepimus.

48. Adulter Uxoris

H. 36.20 Ex duobus filiis <pater> alteri uxorem dedit, alter incidit in adversam valetudinem. medici dixerunt animi esse languorem. quaerenti patri fratris uxorem se amare confessus est. petit pater a filio ut matrimonio cederet. impetravit. inventos in

The person perishes, but his honor lives on.

46. The Rapist's Son, Condemned Without a Trial

The Laws: (1) The law concerning raped women. (2) One may execute one's children without a trial.
The Situation: A certain man committed rape and then ran away. The girl conceived a child from the rape and gave birth. When the rapist returned, the girl demanded the rapist's death. The man wants to execute his son without a trial. The rape victim opposes this.

(Speech of the rapist)

< ... > unless perhaps she was annoyed that she herself did not also condemn him. *I had* already settled the matter with my mistake—or my destiny—by my voluntary departure; but this boy, gentlemen of the jury, yes this boy betrayed me. *If* she resolutely persists in the matter of my punishment, the mother will kill this child. *It* was nobody's business to call me a rapist after this interval, after my exile, after my son [was born]. The opposition says, "he is not your son; that is to say, he was not born after the solemn rites of marriage." In that case, whose son is he? Unless a man lights the marriage torches and sings the off-color marriage songs, can he not be a father? You are an incredibly heartless woman: you don't want the man who made you a mother to be a father!

47. The War Hero and the Pleader

The Situation: A war hero and a pleader were campaigning for the consulship.

(Speech of the orator)

+ <*Fellow* citizens>, <do> your decisions pay more regard to someone's individual merits than to his public merits? *In* the final analysis, you do not know how to frame a request, something which especially offends the good will of the common people. It is our function to plead and persuade by pleading—those of us who have also taken the name of our profession from this activity.

48. The Man Who Committed Adultery With his Wife

The Situation: <A father> granted a wife to one of his two sons, the other became seriously ill. The doctors said that he was suffering from a mental illness. When his father asked the reason, the son confessed to him that he was in love with his brother's wife. The father asked the (other) son to withdraw from the marriage in his brother's favor. The request was successful. Afterwards, when he discovered them in the

adulterio postea fratrem et uxorem secundus maritus occidit. abdicatur a patre.

Sero me, sanctissimi iudices, abdicare patet: ius enim ad hoc redit ut excusare compellar, non quod extrema non tulerim, sed quod illa priora toleraverim. *Qui* capitis poenas a suo fratre pro uxore dilecta petit, quid ipse meruerit, ostendit. *Crimen* superius huic imputare non possum, nam frater ignovit. *Quantum* tibi nuptiarum cessione praestiterit, adulterio probaverunt. *Tibi* liberas et perpetes noctes, sibi furtiva commercia et amorum pericula reliquerunt. *Ignosce* amantibus, si vere amasti.

49. Infamis in Nurum

Adulterum cum adultera liceat occidere. Reus caedis advocatum quem volet, eligat. Erat infamis in nurum. invenit adulescens incertum quem adulterum capite velato. uxorem solam peremit. fit reus caedis. advocatum patrem postulat. contradicit.

Accusator obicit quod adultero pepercerim; pater dolet quod nurum eius occiderim. *Adulter* occidi maluit quam videri. *Habet* adulter poenam suam: cruciatur conscientia, pudore torquetur, et, si interim tectus evasit, inveniet illum postremo vel fama.

50. Pauper Imperator Imperium Recusat

Pauper et dives inimici. belli tempore dives creatus est imperator. qui cum bis fugatus esset, pauper legem tulit ut, qui ter fugatus esset, in crucem tolleretur. tertio dives fugatus est et in crucem latus. filius divitis fert rogationem ut imperium transferatur ad pauperem. pauper contradicit.

act of adultery, the second husband killed his brother and the wife. He is disowned by his father.

(The father's speech; against the son)

Honorable gentlemen of the jury, obviously I am disowning him too late; for the legal proceedings come back to the point where I am forced to make an excuse, not because I did not permit the most recent events to occur, but because I put up with those previous ones. *The* man who executes his own brother because of a beloved wife demonstrates what he himself deserved. *I am* unable to charge to this son here his previous crime, (only) because his brother excused it. *By* their adulterous affair they proved how great a gift he presented to you by giving up his marriage. *For* you they left nights free and whole, from beginning to end; for themselves, stolen acts of passion and the perils of love affairs. *Forgive* the lovers, if you have ever truly fallen in love.

49. The Man Suspected of Misconduct With his Daughter-in-Law

The Laws: (1) One may kill an adulterer along with the adulteress. (2) A person charged with murder may select the advocate of his choice. *The Situation:* A man was suspected of misconduct with his daughter-in-law. The young (husband) discovered some man as the adulterer, but unidentifiable because his head was covered. He killed only his wife. He is accused of murder. As his advocate he requests his father. The father opposes this.

(Speech of the son)

My accuser charges me with a crime because I spared the adulterer; my father is aggrieved because I killed his daughter-in-law. *The* adulterer preferred to be killed rather than exposed. *The* adulterer has his own punishment: he is crucified by his conscience, he is tormented by shame, and, if for the time being he has gotten off because he was disguised, at any rate eventually his bad character will track him down.

50. The Poor Man Refuses the Supreme Command as General

The Situation: A poor man and a rich man were enemies. During war time the rich man was appointed commanding general. After he had been routed twice the poor man had a law passed that anyone who had been routed three times would be crucified. The rich man was routed a third time and crucified. The son of the rich man proposes a bill that the supreme command should be transferred to the poor man. The poor man opposes this.

Habes, pater, grande solacium: reliquisti superstitem legem. *Procede,* legumlator, ad bellum; muta stilum gladio, lorica togam. iam fortunae satis fecimus, et hostes, vel dum vincimur, H. 38.10 fatigavimus. in victoriam paene succedis alienam.

51. Raptor Duarum Filium Nutriens

Lex raptarum. Quidam duas rapuit. productae ad magistratus, altera nuptias, altera mortem petit. magistratus humaniorem sententiam secuti sunt. post factas nuptias illa + quod virgo H. 38.15 perpessa est + quem conceperat, peperit. exposuit. raptor susecepit, qui tunc erat maritus alterius, et alere coepit. reus est uxori malae tractationis.

Venit ad vos pia mulier accusatura pietatem. *Infantem* adhuc iussit feris canibus et diris alitibus exponi. puto, patris similis H. 38.20 apparuit, unde matrem tam graviter offendit. *Nam* qui potest expositum praeterire? "ignoscere non potui." tu me docueras, puella, misereri. *De* matre nihil meminit. o gratum infantis errorem! te existimat matrem! *Disce,* infelix puer, natalium tuorum, disce fortunam. pariter nos ambos mulier afflixit et pariter + <afflictos> alia servabit.

52. Vir Fortis Gladiator

H. 39.5 Infamis non militet. Vir fortis in piratas incidit. rescripsit patriae de redemptione. illa cessante redemit eum lanista et rudem ei in arena dedit. reverso belli tempore denuntiat militiam imperator.

Omnia fieri posse credidi cum me fortuna servum ex libero et

(Speech against the poor man)

Father, you have a magnificent consolation: you left behind this law as your legacy. *Forward* to the fray, you maker of laws; exchange your pen for the sword, your toga for the corselet. We have already paid our debt to the workings of fortune, and even while still we were being beaten in battle, we wore out the enemy. You are practically marching up as replacements into victory—one that belongs to someone else.

51. The Rapist of Two Women Who Brings Up his Son

The Law: The law dealing with raped women.
The Situation: A certain man raped two women. When brought before the magistrates, one woman demands marriage, the other his death. The magistrates supported the more merciful course of action. After the wedding took place, the other woman, + because she had submitted to a man, + gave birth to the child she had conceived. She then exposed it. The rapist, who by then was the husband of the other woman, took up and acknowledged the child, and then began to raise it. He is accused by his wife of maltreatment.

(Speech of the husband)

A devoted wife has come before you intent on censuring my devotion to family duty. *She* ordered what was still but an infant to be abandoned to wild dogs and dreadful birds of prey. I think he looked like his father, and for this reason he gave such offense to his mother. *Well* then, how is it possible to pass by and ignore an exposed child? "I couldn't forgive this." But, young lady, you had already taught me how to show compassion. *He* remembers nothing of his mother. Oh, what a charming mistake on the infant's part! He thinks that you are his mother! *Unfortunate* boy, learn, yes learn the circumstances surrounding your birth. One woman has distressed both of us alike, and another will alike save + <us in our distress>.

52. The War Hero Gladiator

The Law: A person in an official state of disgrace may not perform military service.
The Situation: A war hero fell into the hands of pirates. He wrote back to his native land about ransom. While the state dallied, the manager of a troop of gladiators paid his price and then, in the arena, gave him the wooden sword of discharge. When war time returned the commanding general officially summoned him to military service.

(Speech for the war hero)

I have come to believe that everything is possible when fortune had

gladiatorem de viro forte fecisset. *Imperator* vobis ingerit militem cuius operam non esse rei publicae necessariam proxime non redimendo iudicastis. *Veniam* a vobis, iudices, postulo quod gladiator infamis in iudicio loquor. *Erravi,* iudices, fateor, erravi, qui semper credidi immortalitatem esse pro re publica mori, cum fama etiam viventium consenescat: gladiatorem me fecit non pirata, sed patria. *Sed,* o virtus, in adversis comes, sola tu me secuta in carcerem, tu in ludum, virum fortem tu sola non decipis. *Scitis* me, iudices, periculum contemnere, sed non contemno flagitium. *Utrum* igitur gladiatorem negat [negat] aliquis infamem, an <me> negat gladiatorem? utrumque mendacium est; neque enim condicione gladiatoria quicquam est humilius in vulgo nec meo nomine quicquam nobilius in ludo. "*Fortunae,*" inquit, "fuit." quousque fortunam facimus humanorum negotiorum ream? esto; fortuna fecit ut caperer. quis fecit ut nemo redimeret? *Et,* si victoria solita provenerit, post rudem triumphabo?

53. Invicem Adoptati

Pauper et dives inimici. visi sunt in gratiam rediisse. dederunt invicem filios adoptandos. dives occidit lege indemnatorum quem acceperat. qui est apud pauperem reddidit in senatu causam mortis voluntariae. pauper contradicit.

Utinam, P. C., liberis nostris exire de vita nisi nobis arbitris non liceret! *Perquam* indignum est si utrumque pignus amittam, et quod dedit aliquando natura et quod nunc substituit amicitia. *Amo* enim iuvenem quem non genui meo sanguine, sed redemi.

made me a slave from a free man and a gladiator out of a war hero. *The* commanding general thrusts upon you as a soldier a man whose services you just recently judged as unessential for the state by your failure to pay the ransom. *Gentlemen* of the jury, I beg your indulgence because as a gladiator, in an official state of disgrace, I speak in court. *I made* a mistake, gentlemen of the jury, yes I admit it, I made a mistake, I who always believed that immortality consisted of dying for the state, although the fame of even the living fades into insignificance: but my country—not a corsair—made me a gladiator. *But,* oh my courage, my companion in times of adversity, you alone followed me into the dungeon, you followed me into the gladiatorial school, you alone do not disappoint a war hero. *Gentlemen* of the jury, you know that I disregard danger, but disgrace I do not disregard. *Well* then, does anyone either deny that a gladiator exists in a state of official disgrace, or does he deny <that I was a> gladiator? Each of these is a false impression; for neither is any rank lower in the common masses than my status as a gladiator, nor is anything more noble in the gladiatorial school than my reputation. *The* opposition says, "this was your bad luck." How long shall we make luck answerable for human affairs? So be it; luck was responsible for my capture. Whose responsibility was it that nobody ransomed me? *And* after all that, if the usual victory occurs, shall I take part in the triumphal parade after my discharge as a gladiator?

53. The Sons Adopted in Each Other's Place

The Situation: A poor man and a rich man were enemies. They appeared to have reconciled. Each gave the other his son for adoption. The rich man executed the one he had received in accordance with the law concerning those who can be condemned without a trial. The son who lives with the poor man presented his case for suicide before the senate. The poor man opposes this.

(Speech of the poor man)

Gentlemen of the senate, how I wish that our children were not allowed to depart this life except with us as the judges! *This* is a totally undeserved fate if I should lose each of my valued sons, both the one which nature granted me long ago and the one which friendship has now substituted for him. *I do* indeed love the young man whom I did not father of my own seed, but whom I acquired in the agreement.

PART TWO

COMMENTARY

COMMENTARY

Declamation 1

On the law and its Greek context see Cic. *Inv.* 2.144. In the text of the law (*quinque cum tyranno proximi familiae puniantur*) I follow H. in reading *proximi* for *proximae* (*codd.*), citing that very passage: *tyranno occiso quinque eius proximos cognatione magistratus necato*; cf. Bonner 27-28. Although the text here states only *puniatur*, plainly *capite* is understood; cf. the laws in Calp. 15 (H. 15.16), 27 (H. 25.22); also n. *ad* Calp. 38. The slayer of the tyrant (here the wife—an unusual role for a woman; cf. Tabacco [1985] 60 & n. 155) could expect a reward, usually whatever the tyrannicide desired; see Calp. 13 th.; 22 th.; cf. generally Cic. *Inv.* 2.144; Q. 7.2.25; Sen. *C.* 4.7 (& W. n. 4 *ad loc.* [I, 459]); *DMin* 288, 345, 382. See also Lanfranchi 381-384 (esp. 383); Bonner 104; Tabacco (1985) 10 & n. 23, 37 n. 90. With the events surrounding the assassination of Julius Caesar, the notion of rewarding tyrannicides became applicable to Rome; see App. *BCiv.* 2.127; also Lanfranchi 381; L. *JAW* 113 (1902) 111; Bonner 10, 34, 43; W. n. 4 *ad* Sen. *C.* 4.7 (I, 459); W. (1980) n. *ad* sel. # 7(= Calp. 13) p 76; Russell 32-33. Other themes in Calp. dealing with the general topic of tyranny include 6, 11, 13, 22, 39, 45; cf. Sen. *C.* 1.7; 2.5; 3.6; 4.7; 5.8; 7.6; 9.4; *DMin* 253, 254, 261, 267, 269, 274, 282, 288, 293, 322, 329, 345, 351, 352, 374, 382; *MD* 16. Generally on the figure of the tyrant in declamation see the comprehensive treatment in Tabacco (1985); she cites (p. 5) a work unavailable to me, Wilhelm Fleskes, *Vermischte Beiträge zum litterarischen Porträt des Tyrannen im Anschluss an die Deklamationen* (diss., Bonn 1914); see also the short bibliography in Kennedy 237 n. 113.

castle (*arcem*; H. 1.5): the strong point on the acropolis of a Greek city and the conventional living quarters of tyrants; see Calp. 6 (H. 6.18); 13 (H. 13.3; 14.3); also W. n. *ad DMin* 267 th.; W. (1980) n. *ad* sel. # 7 (= Calp. 13) p. 76, who cites Juv. 10.307 & Mayor's exhaustive n. *ad loc.* (see also Courtney n. *ad loc.*; Tabacco [1985] 15-16). W. adds, "That Domitian is given one in Juv. 4.145 is typical of the tendency to equate bad emperors with the tyrants of declamation." Cf. Weber 26; B. Walker, *The Annals of Tacitus* (Manchester 1952; repr. 1968) 149-153.

"I shall kill him" ("*occidam*"; H. 1.7): i.e., if he turns out to be a

tyrant, as his father and brother had already done. Notice how the objects of address are varied in Calp., as here, where the speaker first quotes the tyrant's wife, then addresses the court. Elsewhere the declaimer may directly address his client (e.g., Calp. 3 [H. 3.9-10]), the gods (e.g., Calp. 5 [H. 5.21]), his client (e.g., Calp. 3 [H. 3.9]), the opponent (e.g., Calp. 3 [H. 3.11-12]), the jurors (e.g., Calp. 2 [H. 2.12]), etc.

woman . . . mother (*femina . . . mater*; H. 1.8): Weber 23 (cf. Schult. & Burm.; L. *JAW* 113 [1902] 111) calls attention to this stylistic tendency in Calp. to identify the same person with two different nouns to distinguish two separate attitudes or types of activity; cf. *uxor / mater* (Calp. 9 [H. 9.15-16]); *parentum / parricidarum* (Calp. 18 [H. 18.7-8]). Here we proceed from the generic—any woman, presumably too weak or timid to kill a tyrant, to the specific—not just any woman, but the tyrant's mother.

the other side (*pars altera*; H. 1.11): presumably, an interested party would present this side in opposition to the wife. An advocate had presented her case, since women would not normally speak before a Greek or Roman court, and declamation followed this convention. There were exceptions, however; notably, when a woman would act as an accuser in the murder of her husband. Other exceptions are recorded in V.Max. 8.3; Juv. 6.242-245. A slave also would be represented by a *patronus*, as would a male citizen who had forfeited his right to plead through infamous conduct, an accusation of treason, or in instances where a citizen who represented his own interests in court (and in declamation) would offend the Roman sense of decorum and propriety (e.g., a son appearing against his father). See Bonner 53-53, and the notable discussion by the Master in *DMin* 260.1-3.

she seeks the reward . . . . (*petit praemium, non quod accipiat, sed quod accepit*; H. 1.12): allit. of *p*; note the parallel *quod* clauses differentiated in meaning by use of subj. & indic.

Declamation 2

For other themes concerned with adultery see Calp. 23, 31, 48, 49; cf. 11, 17, 40. The adultery themes in declamation usually deal with situations where a guilty party or parties caught in the act are killed. This case is an exception, and would apparently fall under the provisions of the *Lex Julia de Adulteriis* of *ca.* 16 BC; see Bonner 35-36; cf. 89-91, 120-122; W. n. 4 *ad* Sen. *C.* 2.7 (I, 362-363). On the general topic of adultery and the legitimacy of heirs, see B. Rawson, "The Roman Family," in Rawson (1987) 34-36. For the specific situation in which the birth of a black child to a white woman is considered proof of adultery see Juv. 6.598-601, where, as here, *Aethiops* is used generically to mean "black" or "Negro," and is not to be understood as geographically specific; see *TLL* s.v. *Aethiops* 1156.30-38; *OLD* s.v. 2; Snowden (1983) 7 & n. 13 (p. 112). An amusing reversal of this plot occurs in Heliodorus *Aethiopica* 9.20, discussed in M. Reeve, "Conception," *PCPhS* 215 (1988) 81-112. See also Snowden (1983) 94-97 on black-white crosses and ancient attitudes towards the subject. He cites a real case similar to ours in Plut. *De sera numinis vindicta* 21 (563) in which the woman who gave birth to the black baby was found to be the great-granddaughter of an Ethiopian. This could explain some such births; another explanation stemmed from a theory of "maternal impression" found in Q. and reported in Heliodorus *Aethiopica* 4.8, but most notably in Hieron. (i.e., Jerome), *Hebraicae quaestiones in Genesim* 30,32 CCL 72.38 = III, I p. 353 Vall. (ibid. & n. 183, p. 145); he refers to a case very sim. to the one found here: *nec mirum hanc in conceptu feminarum esse naturam, ut quales perspexerint sive mente conceperint in extremo voluptatis aestu quae concipiunt, talem subolem procreent, cum hoc ipsum etiam in equarum gregibus apud Hispanos dicatur fieri, et Quntilianus in ea controversia, in qua accusatur matrona quod Aethiopem pepererit, pro defensione illius argumentetur, hanc conceptuum esse naturam quam supra diximus.* See on this Ritter 211; both W. (1984) 290 & Sussman (1987) vii & n. 31 (p. 244) would assign the reference to a lost *MD*; it does not fit Calp. 2 as we have it. Cf. on this, and also the survival of Calp. in the Middle Ages, Silvestre 218-223. Snowden posits a generally tolerant attitude towards interracial unions and their fruit in classical antiquity; the rather severe attitude here at least in part may spring from the father's status as a slave; however, one may detect at least some racial prejudice in H. 2.11-15, esp. if one reads *deformium* for + *formarum* (H. 2.13, on which see below, n. *ad loc.*). What negative views exist concerning blacks, Snowden (1983) 76 & n. 57 (pp. 134-136) categorizes as primarily based on aesthetic grounds.

The husband's argument is based on observable laws of heredity, while the woman's defense to which he is initially replying holds that genetic evidence is not infallible, and that at any rate she would never deign to have an affair with a black (servant). The latter reasoning closely resembles the lover's argument in the Cypassis poems, Ov. *Am.* 2.7, 8. In 2.7 Ov. assures his mistress that he would never stoop to an affair with a slave girl, one who, incidentally, is very dark complected or a black—she is *fusca* : *Am.* 2.8.22; cf. *Ep.* 15.35-38; *Ars* 2.657-658. On this term as describing blacks, see Snowden (1983) 8 & n. 16 (p. 112), 77. On the probable household slave status of the father in Calp. 2, see the suggestive wording in H. 2.19-20.

On the necessary deletion of *habet* (found only in A; retained by L.) from the argument: *matrona [habet.] Aethiopem peperit*, see H. (1974) 54; he rejects Hey's overly ingenious *matrona habet <Aethiopem servum.> Aethiopem peperit.*

otherwise, we would all love in the same way (*alioquin omnes idem amaremus*; H. 2.1): cf. Hor. *Ep.* 2.2.58-60 (in a literary context): *denique non omnes eadem mirantur amantque: / carmine tu gaudes, hic delectatur iambis,/ ille Bioneis sermonibus et sale nigro.*

are we surprised . . . (*miramur hanc legem esse naturae, ut in subolem transeant formae*; H. 2.4-5): cf. Cic. *Off.* 1.126.

like the transcribed copies of a document (*quasi descriptas*; H. 2.5-6): the comparison engages the regular use of *describo* for the copying of books and documents; *TLL* s.v. 658.70ff (*OLD* s.v. 3). The whole sentence is better interpreted as a question; cf. Burm., L.

in Germany . . . (*rutili sunt Germania vultus et flava proceritas; Hispania <. . .> non eodem omnes colore tinguntur*; H. 2.7-8): cf. Tac. *Germ.* 4.2: *rutilae comae, magna corpora*; see also *Ag.* 11.2; *Hist.* 4.61. The latter part of the passage is troubled and H. (cf. *app.*) posits a lacuna after *Hispaniae.* He ties *flava proceritas* to the Germans, known for their great height (e.g., Tac. *Hist.* 5.14; *Ann.* 1.64; cf. Weber 9 & n. 2) and blonde hair; but so were the Spaniards; e.g., Plin. *Pan.* 4.7; see esp. Weber's discussion, 9. For this passage as possible evidence for dating Calp. see Weber 17-18, but cf. L. *JAW* 113 (1902) 110.

in the opposite direction . . . (*ex altera parte, qua convexus et deficiens mundus vicinum + mittit orientem, illic effusiora corpora, illic collectiora nascuntur*; H. 2.8-10): the declaimer, in very poetic style (cf. Verg. *G.* 1.240ff), is looking to the east, or more properly, to the southeast, probably to east Africa. With the idea of blacks already

in his mind, he seems to be referring to the extremely tall Africans known in antiquity to live there; see Snowden (1983) 10 & n. 38 (p. 115). For the rare *effusus* ("sprawling") applied to the body, cf. Stat. *Theb.* 6.841. The "more compactly sized bodies" (*collectiora*—a fairly unusual usage; cf. *TLL* s.v. *colligo* 1621.31) may refer to pygmies; e.g., Juv. 13.167-173 (also Mayor n. *ad loc.* 13.168 and Ferguson n. *ad loc.* 13.167); see Snowden (1983) 135 (also, generally on the size of blacks 10 & n. 38 [p. 115]). The *mittit* of the *codd.* is troublesome; H. (*app.*) wonders whether *emittit* is not called for here; other suggestions include *metuit* (Barth *apud* H. *app.*), *nutrit* (Burm.).

< shameful deeds> (*<deformium>*; H. 2.13): I have followed H. (1972) 60 (cf. *app.*) who, with Gronov., suggests *deformium* here for *formarum* (*codd.*; H. nevertheless keeps it in his text), understanding, or supplying *malarum* to modify it (D.A. Russell, *per litt.*). Cf. *deformis*; H. 2.19; also Tac. *Ann.* 14.15: *feminae inlustres deformia meditari.*

chastity doomed to be lost.... (*periturae pudicitia....*; H. 2.16-20): note the allit. of *p* in this passage. These were particularly popular among the declaimers, notably in Sen. *C.*; cf. Bonner 66; Sussman (1978) 122 & n. 116. Note also the play on different forms of the verb *pereo* (H. 2.16-17), recalling *peccare... peccandi* above (H. 2.2). The phrase *in eo* is taken as antecedent to the *quemadmodum* clause. For this interpretation I am indebted to D.A. Russell (*per litt.*).

in the end, the man who .... (*is demum ....*; H. 2.19-20): probably the beginning of a new excerpt (D.A. Russell, *per litt.*).

is not therefore the fact that she desired to give birth.... (*ita non maius est argumentum pudicitiae, quod parere voluit, quam impudicitia, quod <in>feliciter peperit?*; H. 2.22-23): cf. *MD* 18.3 (H. 355.17-23). The declaimer argues that the woman could have avoided issue from the adulterous affair by abortion. This was the conventional solution to prevent the birth of a child who would not resemble a husband; for a similar situation see Juv. 6.594-601; W. n. *ad DMin.* 277.10; see also Mart. 6.39.6-7; Snowden (1983) 96. Thus the woman's decision to carry the child to full term is evidence of her fidelity. The declaimer then argues that the baby's darkness was caused by bruising during a difficult birth, a condition which will disappear in time. As is conventional, an advocate speaks for the wife; see n. *ad* Calp. 1 (H. 1.11). ABC's *feliciter* must be read *<in>feliciter* (C 2, Pith., Schult., Burm., L., H.).

violently discharged from her possibly injured internal organs (*laesis fortasse visceribus excussum*; H. 2.24): cf. Ov. *Ep.* 11.41- 42: *ut penitus nostris—hoc te celavimus unum— / visceribus crescens excuteretur onus!*

a long lapse of time (*dies longus*; H. 3.2): the context obviously calls for a longer span than a single day. For *dies* in this more general and expansive meaning (although usually fem.) see *TLL* s.v. *dies* 1032.50ff, 1033.14ff; *OLD* s.v. 10; cf. Pl. *Epid.* 544: *longa dies meum incertat animum*; Ov. *Fast.* 2.58: *(templa) longa procubuere die*; also Stat. *Theb.* 1.638-639: *longum . . . diem*; Juv. 10.265: *longa dies.*

grant as much time . . . . (*tantum tempori licet . . . .*; H. 3.4-5): or "time has all the power that you attribute to nature" (D.A. Russell, *per litt.*).

Declamation 3

This declamation has the same title as *MD* 3; however the statement of the theme here is more sketchy and toned down, omitting details which do occur in the subsequent text: (1) that the event took place during the war against the Cimbri (alluded to in H. 3.18), (2) that the violence attempted against the youth was a sexual assault (*stuprum*, as explicitly stated in H. 3.13, 17, and implicitly passim), and (3) that the trial was held before Marius (addressed directly in H. 3.14, 16, 20). For further discussion see Ritter 268-270. This is the only historical theme in Calp. (as it is in the *MD*). The MS tradition of the *MD* preserves a companion piece by a much later hand giving the case against the young soldier. H. does not include this in his text (cf. H. [1982] VI), but it may be found in L. (1905) 58-67 as *MD* III, b. On the incident itself see Cic. *Mil.* 9; V. Max. 6.1.12; Q. 3.11.14; Plut. *Mar.* 14.3-5. The defendant is variously named C. Plotius (V. Max.), Arruntius (Q.), or Trebonius (Plut.). The sources agree on the murdered man; he was C. Lusius, the son of Marius' sister. The incident can with some probability be dated to the campaign season of 101 BC, and before the battle of Vercellae. The Cimbri (cf. H. 3.18) were a fierce Germanic people, pressed by overpopulation, who migrated forcefully from north Jutland, eventually arriving in Italy proper where Marius' army finally halted and defeated them. For discussion of how the murder charge in this case should be handled see Q. 3.11.14: the *quaestio* is whether the soldier was justified in killing the officer, with his line of defense (*ratio*) that the officer attempted an assault on his chastity (cf. Lanfranchi 460-461). The decision (*iudicatio*) of the judge (in this case Marius himself) was whether it was correct for the man to be killed without a trial, or for an officer to be slain by a soldier. On the various gradations of a charge of murder see Bonner 98-100, and, in general, Lanfranchi 469-483.

colonel (*tribunum*; H. 3.7): I have arbitrarily translated as "colonel" the Roman rank of *tribunus*, either the officer in charge of a cohort (equivalent to one-tenth of a legion), or the *tribunus militum*, one of six senior staff officers in a legion.

young man (*adulescens*; H. 3.10): the soldier is represented by someone else, undoubtedly because of his extreme youth (made more explicit in *MD* 3.5-6), the heinous nature of the accusation (murdering a superior officer), and the demands of making the defense of justifiable homicide, since the officer was attempting a homosexual attack. Such a defense would demand a fairly frank discussion of sexuality

(only alluded to here, but dealt with in some detail in *MD* 3) and much would have to be said about the soldier's chastity and innocence. See n. *ad* Calp. 1 (H. 1.11).

a man has the law on his side (*suam legem habet*; H. 3.11): or, "has his rights under the law," "has the law favor him," (or even perhaps in this context, "can take the law into his own hands"); D.A. Russell (*per litt.*) suggests "it has its own law." Cf. Calp. 43 (H. 34.13): *habet quisque nostrum suam legem.* See W.'s exhaustive n. *ad DMin* 294.2, where he cites numerous parallels and similar usages. See esp. *DMin* 341.11, 350.10; also Cic. *Inv.* 2.144 (*suam legem confirmare*); Sen. *C.* 1.5.5; 10.2.8.

what are you trying to do, colonel? (*quid agis, tribune?*; H. 3.11): H. (1974) 54 proposes the more normal *ais* (for *agis*) in such a context, but omits it from his text. We find *quid ais* twice in Sen., four times in *DMin*, 16 times in *MD*, but nowhere else in Calp. (PHI CD ROM 1991); *quid agis* would occur only here in Calp., once in Sen., four times in *DMin*, five times in *MD*.

in your eyes . . . ? (*tibi nondum vir est qui Mario iam miles est?*; H. 3.11-12): note the striking grammatical parallelism (near isocolon) in the antithesis between the main clause and the relative, the emphatic datives of reference and their initial positions (*tibi*, *Mario*), the contrasted adverbs (*nondum*, *iam*), the contrasted nouns (*vir*, *miles*), and the repeated verbs (*est*, *est*). On the fondness of declaimers for this type of construction see Bonner 67-68 (with many examples).

the person . . . . (*non longe ab eo est [miles] . . . .* ; H 3.12-13): W. as reported in H. *app.* suggests deleting *miles*, as does D.A. Russell (*per litt.*). I concur; the expression wold seem to be a generalized statement, with *miles* easily slipping in from the surrounding context, supplied by an early scribe.

Verginius . . . Lucretia (*hanc vim Verginius parricidio fugit; propter hanc Lucretia pectus suum ferro fodit*; H. 3.15-16): the declaimer cites these historical examples to develop the commonplace that it is better to suffer death than live with the dishonor of having suffered a sexual assault. These examples, however, are not really parallel to the situation of this case, since the soldier inflicted death on his would-be assailant. L. Verginius killed his daughter to protect her from the advances of Appius Claudius, resulting ultimately in the overthrow of the decemvirs (449 BC); on this see esp. Cic. *Fin.* 2.66; Liv. 3.44; V. Max. 6.1.2. Lucretia, wife of Collatinus, committed suicide after Sextus

Tarquinius raped her, resulting eventually in the expulsion of the Tarquins from Rome; on this see esp. Cic. *Rep.* 2.47; Liv. 1.58-59. Note the alliterations of *v, p,* and *f*; also the asyndeton and balanced clause endings of *fugit* and *fodit.*

homosexual . . . homosexuals (*impudici . . . impudicitiam*; H. 3.20-21): I have attempted to retain the Latin repetition of these words which are the polite and formal terms denoting homosexuality in certain contexts; cf. in the same sense *impudicitia*, Calp. 20 (H. 19.13); also *MD* 3.16; J.N. Adams, *Latin Sexual Vocabulary* (Baltimore 1982) 132. The two words are rare in decl., occurring elsewhere in *MD* 3.16 (homosexual context), 3.17 (generalized context). It is also found in the more general sense referring to a woman's sexual infidelity in Calp. 2 (H. 2.23); see *TLL* s.v. *impudicitia* 710.59ff (& *OLD* s.v.); also *OLD* s.v. *impudicus* s.v. 1 b). Homosexuality also figures in the content of Calp. 20, 36, 45. For the rather colorless *placet* at the end of this sent. (cf. *OLD* s.v. *placeo* 2 a) D.A. Russell (*per litt.*) suggests a form of the more vivid *pellicio*; cf. *OLD* s.v. 2 b.

Declamation 4

Parricide was the murder (or attempted murder; cf. Simonds 84) of a parent or close relative. The traditional punishment was to be enclosed in a sack, along with a dog, rooster, viper, and monkey, and then be thrown into the sea or a river; cf. e.g. *Her.* 1.23 & Caplan's nn. a, d, *ad loc.* (pp. 42-43); Cic. *Inv.* 2.149; Sen. *C.* 3.2 & W. nn. 1, 3 *ad loc.* (I, 396-397); and esp. Lanfranchi 491-502. Here it would appear that up to one year of imprisonment can precede the punishment, on which see Lanfranchi 497- 498, esp. 498 n. 1; also, generally, 491-502. This is the only case of parricide in Calp. But instances of parricide occur with some regularity elsewhere in decl.; see Sen. *C.* 3.2, 5.4, 7.3 (cf. 7.1); *DMin* 377 (cf. 278.6, 281, 299, 314, 328); *MD* 1, 2, 17 (cf. 4, 8; & killing of a son; 18, 19). I have almost always used "parricide" to translate the crime, *parricidium* (Calp. 3 [H. 3.15]; 4 [H. 4.2, 22]; 10 [H. 10.8]; 21 [H. 20.7]), and the perpetrator, *parricida* (Calp. 4 [H. 5.2, 15]; 9 [H. 9.6]; 12 [H. 12.13]; 18 [H. 18.8; referring to killing a son]), in the absence of a close English equivalent.

The text of the theme is troubled or excessively abbreviated. I have filled out the sense in accordance with the suggestions of H. *app.* H. assumes that the actual crime was the murder of the stepmother (see H. [1972] 60; [1974] 55), probably in view of the son's later remark: *iam non larem habeo, non sacrum, non patrem, ac, ne damnatum esse paeniteat, non novercam* (H. 4.12-13). However this need not necessarily be the case, since with the dissolution of the ties of *patria potestas* (see n. *ad loc.* H. 4.11), the son legally no longer has a father or a mother, as the text in question explicitly states, and likewise, nowhere in the text are the circumstances explicitly stated. Our only clue is the ambiguous phrase *qui sub noverca damnatus est* (H. 4.2-3), in which *sub* could mean (1) "to the accompaniment of" (*OLD* s.v. *sub* 11, denoting persons in some capacity or other; cf. *DMin* 378.2: *sub hoc patre; DMin* 378.2), (2) "during the reign, term of office, etc., of, under" (*OLD* s.v. 12 b), (3) "at the hands of" (*OLD* s.v. 13 b), (4) "under the influence or stimulus of" (*OLD* s.v. 14), and (5) "subject to, under," "under the control, direction of"(*OLD* s.v. 15). Possible scenarios therefore could include attempted murder of the father, with or without the stepmother's connivance, and / or her informing on the son, or an actual or attempted murder of the stepmother. Our only concrete facts are that the father is alive, and that there was at one time a stepmother in the house. On a stepmother's attempt to implicate her stepson in a plot against the father see esp. *MD* 2. Attempted parricide does occur in the declamations; e.g., *MD* 17; cf. Sen. *C.* 7.3; *DMin* 377. The phrase *sub noverca* occurs only twice else in Latin literary remains (PHI CD

ROM 1991), and instructively, in each case the stepmother is still alive. In Sen. *C.* 9.5 th. a maternal grandfather has seized the surviving son whose two brothers died under suspicious circumstances suggesting poisoning while a stepmother was in the household: *quidam duos filios sub noverca amisit; dubia cruditatis et veneni signa insecuta sunt. tertium filium eius maternus avus rapuit, qui ad visendos aegros non fuerat admissus. quaerenti per praeconem dixit apud se esse. accusatur de vi.* The point of the seizure is to prevent the death by poisoning of the surviving son; thus the stepmother must still be alive. In *MD* 1 a blind son, who had been relegated to a secluded part of the house (presumably to suit the wishes of his father's new wife), and a stepmother, accuse each other of the murder of his father. The declaimer (speaking for the son) says: *pater, qui filio sub noverca adsignat secretam domus partem, confitetur uxori se abdicare non posse* (*MD* 1.16); the phrase in question is to be translated as "while a stepmother holds sway" (Sussman [1987] 10). We could very well be dealing in Calp. 4 with a situation where the son was implicated by the stepmother in a plot against the father's life which was nipped in the bud. (On stepmothers in declamation and Roman society in general, see n. *ad* Calp. 22 [H. 20.23].) This would explain the father's fairly cruel attitude towards the son in Calp. 4, and is reminiscent of the portrait of the father in similar circumstances in *MD* 17.

to be dragged away . . . to those darkened dwellings of the wicked (*ad illas me impiorum tenebras trahi*; H. 4.5): note the juxtaposition of *me / impiorum* enclosed within the prepositional phrase in order to reflect his actual imprisonment; also the allit. of *t.* For *tenebrae* in this sense, see *OLD* s.v. 1 c. At the outset the son admits his guilt; cf. H. 5.2 (if not ironic).

please may I have this request . . . . (*liceat impetrare quod non licet recusare*; H. 4.6): a sparkling *sententia* with the near repetition of *liceat / licet*, parallelism of word order, and rhyme of the antithetical verbs *impetrare / recusare.*

could I have ever . . . . (*ego me umquam . . . .*; H. 4.6-11): the son begins a pathetic portrayal of his future suffering in the prison, while calling attention to his father's extreme cruelty. Note the initial emphasis on himself as viewed by a third party, then the subsequent shift of address to his father. The sentences require punctuation as questions; cf. Burm. & L.

a year in the state prison (*annus et carcer*; H. 4.8): hendiadys; cf. (perhaps) below *robur Tullianumque* (H. 4.15-16) & n. *ad loc.*

that there won't be anyone to tighten up my chains when they grow slack (*ne laxata vincula desit qui astringat*; H. 4.10-11): cf. the opposite in *MD* 5.18 (H. 104.15-16): *quam frequenter iam laxata misero vincula rursus imposui* . . . .

legal rights as a father (*iure patris*; H. 4.11): cf. Calp. 14 (H. 15.8): *ius patrium*. Once condemned, the son was legally separated from the family and thus no longer subject to the exercise of *patria potestas*, since parricide was the *ultimum nefas*, and required separation from the normal ties of society, such as proper burial; see Lanfranchi 495-496 (on *patria potestas* itself generally in decl. see Lanfranchi 246-282). The father refers to this situation later (H. 5.14-15: *nihil illi adversus patrem liceret, si parricida non esset*).

sacred family altar (*sacrum*; H. 4.12): on this emendation of the MSS *servum* ("slave") see H. (1972) 60; he takes it as a singular for a plural, the *sacra gentilicia* at the side of where the *Lar* was kept (*larem* is used poetically for the home itself; see below). Calling attention to the parallel H. *app.* cites *DMin* p. 159.12 Ritter (ed.) (mistakenly shown as 159.2 (= *DMin* 290.4). In the full text (*iam non larem habeo, non sacrum, non patrem, ac, ne damnatum esse paeniteat, non novercam*) note the striking anaphora of *non*, ellipsis, and ironical climax of *novercam* at the end. Note the poetic use of *lar* = home (*TLL* s.v. 966.42ff); cf. sim. Sen. *C.* 7.1.18: *patria, populo, lare carere*; *DMin* 321.20: *inter lares suos, inter sacra mensae* (also referring to *domus* see *DMin* 260.27; *MD* 9.11, 12; 13.2, 4).

but something to stop me from feeling sorry that I was condemned (*ac, ne damnatum esse paeniteat*; H. 4.12-13): transl. suggested by D.A. Russell (*per litt.*)

I can visualize . . . . (*video* . . . . ; H. 4.13-21): an excerpt from a *descriptio*, a conventional part of many declamations. It was an elaborately descriptive digression, usually, but not always, relevant to the theme, on which see Bonner 58-60. Here it pathetically portrays the dismal conditions of the prison requested by the son in place of imprisonment at home. For a full and extensive prison *descriptio*, this time a pirates' dungeon on land, see *MD* 5.16-17 (cf. *MD* 6.4, 17-18).

narrow chinks (*angustis foraminibus*; H. 4.14): perhaps calling to mind here the interior of a beehive; e.g., Col. 9.7.5; 9.11.4; Sen. *Ep.* 121.23; see *TLL* s.v. *foramen* 1032.58ff; note Sil. *Pun.* 14.333: *angusta foramina*.

execution cell (*robur Tullianumque*; H. 4.15-16): following A, Pith. added *-que* for rhythmical considerations (H. *app.*); this would then be a fine hendiadys, to match *annus et carcer* (H. 4.8 & n. *ad loc.*), and one of many poetical touches and words in this *descriptio*; e.g., *ingentibus* (H. 4.14), *stridor* (4.17), *sonant* (4.18), *inexorabili* (4.19). The *Tullianum* (here then a substantive noun: *OLD* s.v. *Tullianus* 2) was strictly speaking the underground execution cell in the prison at the edge of the Roman Forum, flanking the *comitium*, and built into the slope of Capitoline Hill. However it could be used by extension, as it may be here, to any dungeon (e.g., Apul. *Met.* 9.10). The *robur* was apparently an oak post in the cell to which the prisoners were chained (*OLD* s.v. *robur* 2 c; s.v. *Tullianus* 2). The conjunction of *robur* & *Tullianum* is unique (PHI CD ROM 1991).

iron-bound door (*ferrati postis*; H. 4.16): cf. Enn. *Ann.* 267: *postquam Discordia taetra belli ferratos postes portasque refregit* (in ref. to the temple of Janus); cf. Hor. *Sat.* 1.4.60-61; also Verg. *Aen.* 7.622: *belli ferratos rumpit Saturnia postis.* Thus, further evidence of the poetic nature of this *descriptio.*

filth roughens their bodies (*inluvies corpus exasperat*; H. 4.20): "The dirt sticks to the skin, and makes it rough to [the] touch" (D.A. Russell, *per litt.*).

is it taking a long time . . . . ? (*nescioquid diu cogitat?*; H. 4.22): I have punctuated the previous statement (*quid . . . . reservat*) as a separate question. For the interpretation of the latter question I am indebted to D.A. Russell (*per litt*).

even when it is proven, it is not believed (*etiam cum <liquet> [creditur], non <creditur> [liquet]*; H. 4.22-5.1): I have accepted H.'s suggestion (*app.*). Otherwise it would mean "even when the facts of the crime of parricide are generally believed, guilt is not proven."

gentlemen of the jury, consider . . . . (*aestimate, iudices, quid fugiam, qui hoc postulo!*; H. 5.1-2): cf. *DMin* 305.2: *aestimate, iudices, quid timuerint qui hoc fecerunt* (noted in H. *app. ad loc.*, and cited as evidence in H. [1972] 60-61 to support the reading *aestimate* in place of *aestima aliud*, which is clearly wrong).

parricide . . . parent (*patre parricida*; H. 5.2): cf. below, *parricida . . . patrem* (H. 5.7-8); *patrem . . . parricida* (H. 5.15). Although the ancients may have thought so, the two words are not etymologically

related; cf. *TLL* s.v. *parricida* 439.63ff; *OLD* s.v. 1 a. The collocation *patr- & parricid-* occurs scores of time in the Latin declamation collections (PHI CD ROM 1991).

you murderer! you deserve, yes you do indeed deserve . . . . (*dignus es, parricida, dignus es* . . . . ; H. 5.7): an especially emphatic *conduplicatio*, with doubling of *dignus* & *es* (cf. H. 5.8-9: *debeo, iudices, debeo*; also *Her.* 4.38; Q. 9.3.28; the device is common in decl.; cf. *DMin* 325.15: *erat speciosa, erat* & W. n. *ad loc.*).

would I be surprised . . . ? (*mirabar si quis tantum sceleris auderet qui<n> contemnere carcere posset?*; H. 5.10-11): I have followed H. (1972) 61 in reading *qui<n>*. As he suggests (but does not subsequently punctuate in his text), the statement is a rhetorical question; he compares Cic. *Ver.* 2.1.154: *quis umquam templum illud aspexit quin avaritiae tuae, quin iniuriae, quin audaciae testis esset?* For the mood and tenses of the verbs here see G&L 597R.5(a).

parricide . . . father's (*nihil illi adversus patrem liceret, si parricida non esset*; H. 5.14-15): see above, n. *ad* H. 5.2. Reference is made to the son's removal from *patria potestas* through his commission of and conviction for parricide; cf. n. above, *ad* H. 4.11. Weber 21 notes the exceptional repetition of *si* clauses through this entire passage (H. 5.8-15).

Declamation 5

The short one word substantival title *leno* is unparalleled in decl.; Dingel 20 n. 55 suggests *leno <reus laesae rei publicae>*. For a parallel to this theme, see Sen. *C.* 10.1.13: *memini illum declamantem [declarasse] controversiam de lenone, qui decem iuvenibus denuntiavit, ne in lupanar accederent, et foveam igne repletam terra superiecta obruit, in quam adulescentibus lapsis et consumptis accusatur rei publicae laesae.* Cf. W. n. 2 *ad loc.* (II, 385) who cites *RLM* 83.1 (and the somewhat different Spengel 2.135, where Hermogenes considers this as a case that does not stand up). Note how abbreviated the information in Calp. is in comparison to Sen. The full statement of the declamatory law is *rei publicae laesae sit actio*, on which see Bonner 97-98. He states that its origins may be Greek or Roman; whether there was a specific actual Roman law for this action is doubtful. See also Lanfranchi 423-425; W. n. *ad DMin* 260. This situation, in comparison with others under which the law is invoked, is certainly very odd. Why isn't the *leno* charged with homicide? There would be no disgrace for young unmarried males to frequent a brothel; see Austin n. *ad Cael.* 48.20, citing Schol. *ad* Hor. *S.* 1.2.31; August. *Serm.* 153.6; Ter. *Ad.* 101. Thus the declaimer here can cite their *pietas* and *frugalitas* (H. 5.23; see below, n. *ad loc.*). Having a more or less permanent liaison with a *meretrix* as in Roman comedy would be a different matter altogether; see Calp. 30; cf. the somewhat amusing *MD* 14 & 15, with their strong reminiscences of Roman elegy and comedy, in which a *meretrix* administers a hate potion to an excessively ardent—and poor—lover. The crux of the *leno*'s defense here is that he constantly gave the youths fair warning of the consequences (*frequenter denuntiasset*; H. 5.17-18; cf. 5.21, 22; 6.2, 6) if they continued to frequent (cf. H. 5.17 & note the repetition: *frequenter . . . veniebant*) his *lupanar* again (*denuntiare, denuntiatio*; H. 5.18, 21, 22; 6.2, 6). Failing to take heed, they have only themselves to blame (H. 6.6). Apparently, in the past they had either abused the girls, or enjoyed their favors without paying.

brothel (*lupanar*; H. 5.17): cf. Courtney n. *ad* Juv. 6.121ff: "apart from scattered references, the main literary sources for Roman brothels are Petron. 7-8 and Sen. *Contr.* 1.2." For further discussion see H. Herter, "Die Soziologie der antike Prostitution," *JAC* (1960) 70ff.

pitfall (*foveam*; H. 5.18): usually employed to trap animals (*OLD* s.v. 2); sometimes filled with fire (e.g., Lucr. 5.1250). See Sen. *C.* 10.1.13 (quoted above, n. *ad* Calp. 5) where the *fovea* is first filled with fire and then once the youths are trapped, covered over with dirt. Interestingly, the term is used figuratively in comedy for trapping a

leno (Pl. *Pers.* 594; *Poen.* 187). Here the tables are turned. On arson see Sen. *C.* 5.5; Bonner 117- 119.

what great presumption for a man (*quantum ausus est cui*; H. 5.21): cf. Calp. 9 (H. 9.10-11): *tantum ausus est*; also Calp. 4 (H. 5.10): *si quis tantum sceleris auderet.* See Weber 23. With Burm. and H. (1972) 61, I read *cui* (*quoi*) for *quod* (*codd.*, L.).

those youths had .... (*fuit in illis summa pietas; placuere patribus: summa frugalitas; displicuere lenoni*; H. 5.22-23): ironical. As Duckworth 262 describes him, the Plautine *leno* "is characterized by greed and accused of impiety, perjury, faithlessness, cruelty, and inhumanity." Here the emphasis is on his cruelty. Note the alliteration of *p*, asyndeton, ellipsis, parallel structure, and the antithetical contrast between the related verbs in the poetic 3rd plu. perf. act. (*placuere / displicuere*). I have translated *patribus* as "parents" to keep the allit.; interestingly, MN actually have *parentibus.* Frequenting a house of prostitution would not rule out the quality of *frugalitas* ("steadiness of life, sober habits, temperance, self- restraint," *OLD* s.v. 1) of young men in Roman society; cf. Cic. *Ver.* 1.101: *homo frugalitatis existimatione praeclara . . . qui . . . cum meretricibus lenonibusque vixisset.* See also n. above *ad* Calp. 5.

Declamation 6

This conjectural case is very closely parallelled by *DMinD* 351; see W. n. *ad loc.* As usual the latter theme provides more specific details, while it deals with the topic from only the rich man's point of view. Cf. *DMin* 254, 267. On rich men and poor men as enemies (just alluded to in this decl.) see n. *ad* Calp. 6 (H. 6.13); also n. *ad* Calp. 17. On tyranny and tyrants see n. *ad* Calp. 1; also Lanfranchi 381-384. On treason (*proditio*), an issue here because of the poor man's exile and his supposed plotting, see n. *ad* Calp. 15. While in the themes of *DMin* 351 & 352 the law is stated *ex suspicione tyrannidis sit actio*, here we have *accusatur dives affectatae tyrannidis* (H. 6.11; cf. 6.9; also 6.13-14 *de tyrannide* & n. *ad loc.*); see also Calp. 11 (H. 11.9-10): *affectatae tyrannidis reus*; cf. Tabacco (1985) 9 & n. 20, 25ff, 68; also Dingel 81-82; Lanfranchi 384 & n. 4; Q. 7.2.11, 53, 54; 9.2.81; *DMin* 254 th.; 261.8-9; 267 th., 3, 8, 9, 10; 322 passim; cf. 351 & 352 passim.

a rich, noble young man (*adulescens dives nobilis*; H. 6.8): *dives* may well be a noun here; cf. *DMin* 352 th.: *adulescens dives nobilis* & W. n. *ad loc.*

intercepted the evidence (*intercepisse ... indicium*; H. 6.12): perhaps a suggestion that the exile's death was caused by poison; see Suet. *Jul.* 20.5 *intercepisse veneno indicem* (cf. *Claud.* 1.4; *Nero* 35.5). Or less colorfully, but more likely, the man was murdered by conventional means and just the evidence was interdicted of the rich man's attempt at tyranny which the poor man would have brought before the senate; cf. *DMin* 351 th.: *exul ille intra fines est occisus*; also, the similarly worded law: *exulem intra fines deprehensum liceat occidere* (ibid.).

you yourself provided it (*ipse fecisti*; H. 6.12): *indicium* must be understood here as the direct object (Burm.; H. *app.*; cf. Ov. *Ep.* 16.245: *indiciumque mei ficto sub nomine feci*). By murdering the exile who was returning to give evidence, the rich man proved himself to be attempting tyranny.

poor man (*pauper*; H. 6.13): the corresponding *DMin* 351 does not dwell on the rich man / poor man opposition as here. It may have been introduced to arouse sympathy for the murdered man, or simply because the declaimers were very fond of this opposition since it offered the opportunity to employ some of their favorite commonplaces (especially on wealth and humble birth; cf. Bonner 61 & W. n. *ad DMin* 252.18) and highly rhetorical coloring. The rich vs. poor man theme is exceptionally common in this collection; see Calp. 7, 11, 17, 27, 28,

29, 36, 50, 53; also n. *ad* Calp. 17. The most notable occurrence in declamation is *MD* 13 ("the poor man's bees"), on which see the series of articles by Tabacco (1978, 1978a, 1979, 1979a); also Russell 27-30; Migliario 527-533.

about the tyranny business (*de tyrannide*; H. 6.13-14): cf. Calp. 13 (H. 14.3-4): *de tyrannicidio*; also Calp. 6 (H. 6.9): *de affectata tyrannide*; Calp. 11 (H. 11.9-10): *affectatae tyrannidis reus*; (H. 11.16): *tyrannidem*; see also n. *ad* Calp. 6. Weber 21 remarking on this cites what appears to him to be some striking uses of *de* in Calp.: 10 (H. 10.16); 11 (H. 11.17); 13 (H. 14.3-4); 14 (H. 15.7); 34 (H. 29.20-21); 40 (H. 33.1): however, I fail to see any unusual Latinity in Calp.'s use of the prep., except that we do find *queror* and *conqueror* used intransitively with a *de* prepositional phrase to express what would normally be the direct object: Calp. 11 (H. 11.17); 14 (H. 15.7); cf. with *nego* 13 (H. 14.3-4).

what do you want us to suspect? (*quid vis suspicemur?*; H. 6.14): cf. *DMin* 313.7; 367.5; *MD* 9.23; 10.11, 18; cf. Tabacco (1985) 48 n. 124. The construction seems to be colloquial and / or comic; cf. e.g., Pl. *Bac.* 692 (*quid vis curem?*); Ter. *Eu.* 1054 (*quid vis faciam?*). I.e., "by opposing his return, you naturally make us suspect your guilt; do you really want to do this?" (D.A. Russell, *per litt.*).

from the place whence you came, came letters (*unde venisti, venerunt epistulae <te> consecutae*; H. 6.15): note the emphatic repetition of the two different perfect active forms of *venio*. Gronov. suggested *unde* for *inde* (*codd.*) and <*te*>; H. does not accept the latter (as I do). (L. retains *inde* and does not accept <*te*>, but reports both in his *app.*)

more than what is suitable to one's status as a citizen (*plus quam civilia*; H. 6.17): Weber 19 compares Ov. *Met.* 12.583: *exercet memores plus quam civiliter iras*; also, Luc. 1.1: *bella per Emathios plus quam civilia campos*, a phrase which he cites as the source for Calp. here; but it is most probably a standard expression long used in the schools; cf. L. *JAW* 113 (1902) 110. See also Isid. *Orig.* 18.1.2: *quattuor genera sunt bellorum: iustum et iniustum, civile et plus quam civile.* For discussion see Tabacco (1985) 46 & n. 119, citing Tac. *Ann.* 1.12; cf. ibid. n. 121.

the equivalent of slavery (*instar servitutis*; H. 6.18): see Weber 19 & 22; he states that neither Q. nor Sen. used *instar*, (and it does not otherwise occur in decl.; PHI CD ROM 1991) but that it then appears

frequently in Plin. (*Pan.* 29.1; 37.4; 52.4; 81.1; he uses this as evidence for dating Calp.); cf. Tac. *Ann.* 1.20; 2.61; 3.36.

for a long time now (*iam pridem*; H. 6.18): according to Weber 23, *iam* characteristically appears in the beginning position of sentences or clauses in Calp.; he cites (rather curiously) Calp. 7 (H. 7.15), 15 (H. 16.3), 21 (H. 20.7); more striking are the instances in Calp. 4 (H. 4.12); 6 (H. 6.18); 10 (H.10.20); 11 (H. 11.21); 16 (H. 16.16); 46 (H. 36.5); 50 (H.38.9). The proportion does not seem exceptional, since forms of *iam* occur some 33 times in Calp. D.A. Russell (*per litt.*) suggests the possible beginning of a new excerpt with *iam pridem*, in which wealth is connected with tyrannical ambition. See following note.

your riches . . . proper for a private citizen (*supra civilem hanc peraequationem divitiae te elevaverunt*; H. 6.19-20): cf. *plus quam civilia*, above H. 6.17 & n. *ad loc. Peraequatio* is found only once more, much later, in Zeno of Verona, *Tract.* 1.4.19 (PHI CD ROM 1991). More common in a sim. meaning is *aequatio*, as in the title of *DMin* 261 (*aequatio patrimoniorum*) or, better, *aequalitas*, (e.g. Tac. *Ann.* 1.4: *omnes exuta aequalitate iussa principis aspectare*). Burm. actually here reads *aequationem*; cf. his n. *ad loc.* For the notion that excessive wealth causes people to become tyrants, see Calp. 11 (esp. H. 11.16); cf. *DMin* 261 tit. & W. n. *ad DMin* 261; also Tabacco (1985) 27-29 (citing this passage in Calp.); cf. 44, 116 n. 320, for additional discussion and citations. For the general thought (in the case of Seneca) see Tac. *Ann.* 14.52: *privatum modum evectas opes.*

in the case of Manlius . . . . (*in Manlio quondam potuisse damnatum est*; H. 6.20-21): Marcus Manlius (*P-W* Manlius 51). Cf. Q. 7.2.2: *in definitis . . . an regnum adfectet Manlius*; see Tabacco (1985) 68 & n. 184. Though as consul he defeated the Aequi (392 BC) and later saved the Capitol (387 BC; Liv. 5.47), the tradition holds that he was later condemned on a charge of aspiring to *regnum* (Ov. *Fast.* 6.189: *vixit, ut occideret damnatus crimine regni*; cf. generally *Fast.* 6.185-190). The "potential" (*potuisse*) referred to, of course, is to become a tyrant; the translation here was suggested by D.A. Russell (*per litt.*).

I don't understand why this person is casting suspicion on my vote in the senate (*non intellego quemadmodum infamet iste sententiam meam*; H. 7.2): I have adopted H.'s emendation and interpretation of this troubled passage in place of L.'s impossible *infame<n>t ista*; see H. (1974) 55-56 & *app.* Here *iste* = the prosecutor, & *sententiam* refers to the rich young man's vote against the exile's recall; cf. above, *secundum sententiam* (H. 6.12-13) and also the opposition's remark:

putatis illum contradixisse? confessus est (H. 6.16-17). See also *DMin* 351.9: *adiecissem huic suspicioni sententiam meam, ut viderer timere indicem*?; cf. W. n. *ad loc.*, who also refers to the problem of the rich man's vote against the recall which could be turned against him; compare also the prosecution's *putatis illum contradixisse? confessus est* (H. 6.16-17).

a man . . . is a restless object (*inquieta res est homo*; H. 7.3-4): this gnomic remark is in keeping with the Master's *color* of portraying the exile in this conjectural case as a man characterized by political *audacia*, and who bore both his condemnation and exile very badly; see *DMin* 351.1-2 & W. n. *ad* th. In a different context cf. *per se inbecilla res est femina* (*DMin* 338.8). For similar phrasing (*res est . . .*) see Calp. 29 (H. 27.3); 30 (H. 28.2); cf. Sen. *C.* 3 pr. 11; *DMin* 331.17. This translation suggested by D.A. Russell (*per litt.*).

more harm (*in deterius*; H. 7.4): cf. Sen. *C.* 1 pr. 7, on the decline of eloquence: *in deterius deinde cotidie data res est*; cf. Sussman (1972) passim; also *C.* 2.5.7.

I must reveal . . . . (*prodam necesse est . . . .*; H. 7.5-6): Schult. suggests that because of the necessity to defend himself against the charges, the rich man makes a show of reluctantly betraying his host's confidence in revealing the tenor of their personal and private conversations—i.e., that he was angry at his conviction, exile, and loss of reputation. H. (*app.*) adds that there may however be something missing here (D.A. Russell, *per litt.*, concurs), probably before *prodam*, which may point to an innocent act on the rich man's part which was misinterpreted by the exile as signifying an intent to install tyranny.

Declamation 7

This case somewhat resembles *MD* 11, and to a lesser extent, *DMin* 337. On the rich man vs. poor man motif see n. *ad* Calp. 6 (H. 6.13). This case involves two charges: (1) the subsidiary charge, which brings about the case, is treason, normally stated *proditionis sit actio*, expressed here as a rumor (*rumor ortus est prodi rem publicam a pauperis filiis*; H. 7.9), on which the rich general based his actions of torturing the sons, executing them, and then refusing proper burial, on which see n. *ad* Calp. 15; also Calp. 32; Sen. *C.* 7.7 & W. nn. 3 & 4 *ad loc.* (II, 144-145); cf. Q. 7.1.29- 30; Simonds 93-94; Lanfranchi 432-436; Bonner 109-110 (and many sources there cited). The exact nature of the crime, which was capital both in the early Republic and the Empire, is not specified. There is good evidence that under Roman law certain criminals, especially those convicted of capital offenses, could be put to death and not buried; see the evidence collected in Bonner 100-101. (2) Precipitating the actual case here is the poor man's charge that the rich man committed murder (*accusat divitem caedis*; H. 7.12), since, as he contends, his sons were not guilty of treason; on the laws regarding homicide see Lanfranchi 469-483. The poor man's major arguments are that the sons maintained their innocence to the end, and that they were innocent victims in the feud between the rich man and the poor man (graphic evidence of latter was the merciless torture inflicted on them by the rich man). The rich man argues that because the sons were poor, they could be corrupted, and that the enemy withdrew after the corpses of the brothers were found.

these (*quae*; H. 7.11): as punctuated by L. & H., a connecting relative, infrequent in Calp.; e.g., Calp. 11 (H. 11.14: *qui*); 14 (H. 14.10 *quo*); 50 (H. 38.3: *qui*). One could place a period after *necavit*, and a comma after *iussit*, but this would be more awkward than the rare connecting relative.

unique among all men, they were tortured—until such time as they would give a false account (*soli omnium torti sunt, donec mentirentur*; H. 7.14): cf. *DMin* 338.26: *torque donec mentiatur*. They were innocent, the poor man maintains, and were tortured by the rich man until the point where he hoped that although innocent, they would lie to stop the pain, thus justifying their own torture and subsequent execution. However, they did not give a false confession, and thus the poor man charges the defendant with murder. The charge has more weight because they remained steadfast (*pernegantem*; H. 7.10: cf. *perneg<antes nec>avit*; H. 7.23). *Pernegare* is the conventional verb to express denial in the face of torture; see Calp. 13 (H. 13.4); *DMin*

269 th., 4; 307 th., 8; *MD* 18.12. Exactly how the father knew this is not stated here. For an opposite sentiment and one much more conventional in the *locus de tormentis*, cf. *DMin* 269.16: . . . *aude dicere homines in tormentis solere mentiri*; see also W. n. *ad loc.*, with much citation (for both decl. & real life). For a sample of how a declaimer used the *locus*, see Sen. *C.* 9.6.18. Decll. with significant occurrences of torture include Calp. 12, 13; cf. 24, 40; also Sen. *C.* 2.5; 8.3; 9.6; 10.5; *DMin* 269, 272, 307, 324, 328, 338, 353, 379, 381; *MD* 7, 18, 19. On the *locus* generally see Bonner 59 (cf. 61); also 112 (as a legal punishment); on the social status of those tortured see Tabacco (1985) 102 n. 275.

identify (*agnoscere*; H. 7.16): the poor man must deal with a difficult point: the enemy gave proper burial to his sons' corpses. In keeping with the goriness found in many of the declamations dealing with torture, he maintains that they were buried out of humanitarian reasons, not because they were recognized as their spies. Indeed, he says, they were tortured so mercilessly that they could not be identified in any case, even (pathetically) by their own father (they may have been beheaded; cf. Bonner 100-101; however *lineamentis* [H. 7.15] usually suggests the appearance of the face [*OLD* s.v. *lineamentum* 3]). The enemy therefore concluded that they must have been captives from their side to have been tortured so mercilessly. Generally, the declaimer would want to emphasize the cruelty of the rich man (a commonplace; Bonner 61); cf. *crudeliter* (H. 7.18), *irato imperatori* (H. 7.21-22); see also n. *ad* H. 7.22.

they would suppose . . . . (*nullos sic ab isto esse tortos nisi captivos putarent. proditores putas quos tam misere tamque crudeliter punitos hostis non vindicavit?*; H. 7.17-19): note the preponderance of *s*'s, *t*'s, and *p*'s; the declaimer is spitting out his charges against the rich man. H. begins a new separate extract with *proditores*, but it would seem to be both a conclusion and a rhetorical question arising from the previous statement.

who (*qui*; H. 7.20): note the unusual *qui* for *quis* (which Meister 237 has suggested as the correct reading, as had Burm., but not cited in H.'s *app.*); for another instance see Calp. 51 (H. 38.20), where the reading is uncontested; but cf. Weber 21. The sons, as the father describes it, despised the rich man's wealth—probably because as was traditional in these exercises it made him insufferable and tyrannical; see n. *ad* Calp. 6 (H. 6.19- 20).

the rack (*eculeum*; H. 7.21): in accepting this emendation of Gronov. & Schult. for *ignem*, H. (1972) 62 cites Hier. *Ep*. 1.3.3 as a parallel (*cum eculeus corpus extenderet*); cf. Sen. *C*. 9.6.18 (*ad intendendum eculeum*). Fire and insufferable heat would generally accompany use of the *eculeus*; e.g., Sen. *C*. 2.5.6; 9.6.18; 10.5.9; *MD* 7.11, 12, 13; 18.11; 19.15. The rack is a favorite torture device in declamation: see esp. Sen. *C*. 2.5.3, 6; 9.6.18; 10.5.9; *MD* 7.6, 11-13; 18.1, 11; 19.7, 12, 15; and probably *DMin* 338.15.

a torture master isn't good enough (*tortor non sufficit*; H. 7.22): the ultimate in cruelty; rather than use the services of a professional torture master, the rich man / general inflicts the torture himself, as is made clearer below (H.7.23: *tortor inimicus*). See Calp. 24 for a reversal, where a father is ready to hand over his son to a professional executioner because he cannot do the job himself; the son then pleads that he wants his father to execute him personally (in the expectation that he will not be able to do so). *MD* 18 & 19 deal with a father who personally tortured his own son to death while interrogating him concerning suspected incest with his mother. The services of a *tortor* are often called upon in declamation: Sen. *C*. 2.5.5, 9; 8.1 (= H. 228.22); 9.6.18, 19; 10.5.3, 9, 11; *DMin* 338.15, 26; *MD* 7.7, 9, 12; 16.11. Note the use of the singular; torture is meted out to them, one at a time, perhaps as D.A. Russell (*per litt.*) suggests: "Cruelty would be greater it they were tortured successively, perhaps in view of each other."

you ask for the outcome? He put them to death, though they denied the charges to the end (*quaeritis exitum? perneg<antes nec>avit*; H. 7.23): perhaps the declaimer intended a play on *exitus*, which can mean in this context either "result, issue, outcome" (*OLD* s.v. 5) or "conclusion of one's life" (*OLD* s.v. 3 b), as in Calp. 31 (H. 28.12). For *pernegavit* (*codd.*) H. (1972) 62 suggests instead *pernegaverunt* or *perneg<antes nec>avit*, and I have read the latter to fill out the sense. Alternatively, one could assume an implied *uterque* as the subject of *pernegavit*, as parallelled in the theme: *utrumque torquens pernegantem necavit* (H. 7.10). Thus one need not supply *corpus* as H. (ibid.) did for the subject of *uritur* (H. 7.22), unless one wants to understand *utrumque corpus*, as I have done in H. 7.21.

we were traitors (*nos proditores*; H. 8.1): the simplest interpretation of this text is as an ironic statement, which assumes that the rich man / general had stated or implied that the father was privy to the sons' supposed treachery (cf. H. 8.7-8: *imperatorem me fecit inimicus*), and also that he was attempting to settle his score with the poor man

through his sons (as in Calp. 11, 28, 53; cf. 29, 36, 39, 50; see also *MD* 7, 11 for extended treatment of this topic). Possibly, however, the poor man is speaking in the *persona* of his sons here (Gronov.). A less convincing case can be made for emending *nos* to *non*, or that *non* slipped out before *nos* in a construction analogous to H. 7.10 (*utrumque . . . pernegantem*; cf. n. *ad* H. 7.23), or for replacing *nos* with *num* (Schult.). Since these excerpts are out of context it is often, as here, difficult to know which.

do you deny . . . . personal enemies (*negas potuisse corrumpi? pauperes fuerunt. negas voluisse prodere? inimici*; H. 8.4-5): note the anaphora of *negas*, the clipped sentences often so characteristic of declamatory style, and the abbreviated elliptical expression.

Declamation 8

The declamatory *actio dementiae* is also directed by sons against fathers in Calp. 30 & 38; cf. *DMin* 346 th.: *adversus patrem ne qua sit actio nisi dementiae.* Under normal circumstances a son could not initiate a court action against his father; see F. Schulz, *Classical Roman Law* (Oxford 1951) 160. The *actio dementiae* is probably a translation of the Greek *dike paranoias* (Bonner 93 & n. 4), but it closely parallels the Roman legal practice of a formal court action to petition for a *curator* (Bonner 93-94, with much citation); see esp. the humorous account in Sen. *C.* 3 pr. 17 (on which consult C. Rayment, "Presumption Rebuked," *CJ* 42 [1947] 259- 260). To Bonner's listing of such cases in Roman declamation, add those listed in W. (1984) 597 n. 1; see also W. n. 2 *ad* Sen. *C.* 2.3 (I, 266); cf. 2.3.1. For a discussion of how a declaimer should handle such cases, see *DMin* 316.1-4. The conventional symptoms of *dementia* are listed in W. n. *ad DMin* 349.4. Hanging is the usual mode of suicide in this collection; Calp. 10, 29, 42; cf. (unspecified) 16, 18, 20, 38; see also W.'s exhaustive n. *ad DMin* 260.24. On the legal status of suicide see Q. 7.3.7, and, more comprehensively, Lanfranchi 489-490 (esp. 489 n. 1, with a full citation of suicide in decl.); Bonner 101. See also n. *ad* Calp. 20. Note that in the world of declamation, a suicide could not receive proper burial unless a due explanation of the reasons was delivered to the senate beforehand; see n. *ad* Calp. 20.

a man fortunate for too long a time . . . . (*omnium calamitatum materia est homo diu felix*; H. 8.13): here the declaimer is delivering the commonplace on the mutability of fortune, easily transferred as needed from one speech to another (Sen. *C.* 1 pr. 23). As examples of this sort Bonner 61 cites Sen. *C.* 1.1.3, 5; 1.8.16; 2.1.7; 5.1; etc.; see also the entry under "commonplace" in W.'s index II (1974) II, 635. For sim. figurative use of *materia* see *MD* 15.12 (H. 315.11); also *Her.* 2.34: *omnium malorum stultitia est mater atque materies*, & Caplan n. a *ad loc.* (pp. 118-119); Sall. *Cat.* 10.3 (referring to greed): *ea quasi materies omnium malorum fuere*; cf. e.g., Hor. *Carm.* 3.24.49; Tac. *Ann.* 13.49.

success does not know . . . . (*nesciunt stare successus, et quotiens prodire felicitas non potest, redit*; H. 8.13-14): cf. Vell. 1.17.6: *difficilisque in perfecto mora est, naturaliterque quod procedere non potest, recedit.* See also Sen. *C.* 1 pr. 6-7 where he discusses the decline of public speaking in somewhat similar terms, esp. 1 pr. 7: . . .

sive fato quodam, cuius maligna perpetuaque in rebus omnibus lex est ut ad summum perducta rursus ad infimum, velocius quidem quam ascenderat, relabantur. See on this Sussman (1972) 195-210.

I want to die (*mori volo*; H. 8.15): cf. Calp. 15 (H. 16.6) & H. (1972) 66. The phrase or sim. is common in declamation; see Q. 9.2.85; W. n. *ad DMin* 335.3; also Sen. *C.* 2.3.1; 7.1.3, 4; 7.3.1, 5; *DMin* 335.3, 4, 8, 9, 10; 337.3; *MD* 4.2, 8; 17.16; cf. Sen. *C.* 7.3.10; *DMin* 335.2; 344.12; *MD* 17.19. See W. n. *ad DMin* 259.24: "a threat of suicide, common in emotional passages."

why does my good luck even now protect me? (*quid me iam fortuna custodit?*; H. 8.15): as an old man who has experienced the height of success, he wants to know why his good luck should now watch over him and prevent him from ending his life. For *quid* Pith. suggests *qui* or *quo*; cf. Meister 236; but the text makes perfectly good sense as is; i.e., *quid* = *quare*; cf. H. *app.*

that you were what you were . . . (*in illius potestate non est fuisse*; H. 8.18): sc. *te ter consulem esse.* A very difficult and odd piece of Latin; this interpretation suggested by D.A. Russell (*per litt.*).

. . . had it not been prosperous (*nisi prodisset*; H. 8.19): H's reading (1974) 56, for the unlikely *prodesset*; " . . . every successful man (but no one else) has reason to fear fate, and you are therefore not in a unique position." He compares the opposite sentiment in Calp. 7 (H. 7.13- 14).

Declamation 9

The situation as described lacks many details. It would seem that as a given the son was a bad sort (*luxurioso filio*; H. 8.21). The father refers to his *amentia* (H. 9.4), and describes him with such words as *pessimus* (H. 9.1), *parricida* (H. 9.6), and *sceleratus* (H. 9.9). He dared a terrible crime while his father was still unhandicapped (H. 9.10-11), although the text does not make clear whether that was the actual blinding, or some other unspecified crime. The father describes his misery at having to tell the truth about the situation (H. 9.12), and terms his wife a *mala* . . . *uxor* (H. 9.15). Since in Calp. there is more reluctance to go into sexual details than in the other collections (e.g., cf. Calp. 3 with *MD* 3; see also above, n. *ad* Calp. 3 [H. 3.10]), we may perhaps reconstruct a scenario similar to *MD* 18 & 19, where a son is suspected of incest with his mother, to which we may add a further suspicion of an attempt on the father's life; cf. *MD* 2.11-12, where a stepmother attempts to implicate a stepson in a plot to kill his father. This, then, probably explains the term *parricida*, hurled at the son (H. 9.6; see n. *ad loc.*). At any rate the mother was banished, apparently into a secluded part of the house (cf. *MD* 1 th. where a father also sends off a son: *iuvenemque in secreta domus parte seposuit*), to which the son and father apparently also retired, and where the blinding took place. Then there is the question of how the father became blind (*excaecatus*: H. 8.22), which is also left unspecified. In decll. people can become blind by weeping constantly because of intense grief, as happens e.g., in Calp. 10 th. (cf. *MD* 6 th., 16 th.), and is so assigned in the *TLL*, s.v. *excaeco* 1195.27; cf. H. 9.5 *perderet oculos*; also in Calp. 10 (H.10.2) *flendo oculos perdidit*. Yet *excaeco* is a strong verb, and as in Calp. 43 (cf. H. 34.10, cf. 13), here undoubtedly means being blinded through somebody's physical act. See also Sen. *C.* 1.7.12; 3.1 (H. 135.22, 24; 136.4); *Suas.* 1.12; *DMin* 297 (passim); 357 th.; *MD* 2.10 (but for weeping as causing blindness: Sen. *C.* 7.4 th.; *MD* 6.2, 6; 16.11). Note the use of *fecisse* to describe the process (H. 8.22; 9.2); also the powerful *eruit oculos* (H. 9.13) and the wording in H. 9.5-6, 10, 14. In recompense for his blinding, the father requests *talio*, retribution in kind, common enough in such cases (Calp. 43; cf. Sen. *C.* 3.1 [H. 136.9]; *DMin* 297 th., 1, 8; more generally, 358 th., 1, 3; 372 th., 8; 385.4; *MD* 7.4). *Talio* is a primitive kind of justice, going back to the Twelve Tables; see Bonner 92 & n. 3, 96-97, 106 & n. 7; also W. n. 4 *ad* Sen. *C.* 3.1 (I, 395) who notes esp. the discussion in Gell. 20.1.14ff; cf. *C.* 10.4.9, 13. It occurs once more in Calp. 43 fully stated as a law: *talionis sit actio* (H. 34.9; cf. 34.11).

why should we believe . . . . out in public (*quid te secreto fecisse credamus? matrem in foro excaecas*; H. 9.2-3): i.e. *in iudicio*, in this very proceeding, by allowing his mother to take the blame she will suffer *talio*. Cf. *DMin* 372.1, also a case of *talio*, and in which a foster father is struck by his son: . . . *bis parricida est, semel domi, iterum fori. Parricida* occurs here in its weakened sense; cf. W. n. *ad loc.*; note also its use elsewhere (cf. 372.4 [twice]; cf. 372.7 [*parricidium*]), for daring to strike and injure a father. Thus, when the father uses the same terminology in Calp. 9 (H. 9.6), it could be just referring to the act of physically blinding his father.

the young man progressed into so deep a state of madness that . . . . (*in tantum iuvenis processit amentiae, [ut] propter illum pater ut perderet oculos, mater odisset*; H. 9.4-5): BCMN have *tantum*; *tantam* (L., H.) is a later correction in C; *amentiae* is read here therefore for *amentia* (MN, Burm.) or *amentiam* (L.). See H. (1972) 62 whom I follow here, but who does not incorporate these changes into his text. I follow H. (ibid.; cf. Burm.) in rejecting the *ut* before *propter*, because as H. states, "this gives more stress to the parallelism *pater—mater*, and the unusual word order may have caused the introduction of the first *ut*."

absolute scoundrel (*parricidam*; H. 9.6): is he so termed because of a plot to kill his father and / or handicap him, either so that he may control the family finances, or because of some undercurrent of an intrigue also with the mother (perhaps stepmother?, as discussed above, n. *ad* Calp. 9; cf. H. 9.2-3)?

let's grant that you are innocent . . . . (*ut innocens sis; dum excaecaretur pater, expectasti?*; H. 9.6-7): or, "granted that you are innocent," "even supposing you are innocent." In any event, the son was present when the father was blinded and either caused it or let it happen.

young man, you're the kind of fellow . . . . (*talis es, adulescens, ut excaecare volueris patrem, aut te excaecare velit pater*; H. 9.8-9): Jones' text; but *codd.*, Burm., L. have: . . . *patrem, aut te excaecare velit pater*; H. 9.8-9 has . . . *patrem, ut et excaecari velit mater.* Gronov. and esp. Schult. believe that this part of Calp. 9 is filled with textual troubles, although W. (as reported in H.'s *app.*) believes it is correct as is. H.'s version as discussed in (1972) 62-63 (*talis es adolescens, ut excaecare volueris patrem, ut et excaecari velit mater*) gives us: "you are such, young man, that you would blind your father just in order that your mother should want to be blinded too." While this makes perfectly

good sense, it involves, as Jones 89 points out, a total of four palaeographical changes. Although each is minor, such a number rightfully disturbs, as does its stylistic awkwardness. The heart of the matter is the meaning of *aut*. In Jones' view it does not signify mutually exclusive alternatives (i.e., either he wants to blind his father, or his father wants to blind him), but rather in this case modifies and corrects the previous statement (Jones cites *OLD* s.v. 6 b [cf. 6 a]; L&S II c; also *TLL* 1564.77ff; 1565.29ff). As he explains, "This statement is a strong indication of the extremity of the father's feelings, but it is entirely justified by the facts of the case: the son . . . blinded his father, who now *petit talionem* . . . . For the father to succeed in putting his desire for an eye for an eye to use in his case against the son would show very well the ingenuity prized in declamation." Further, the repetition of *pater* (in two diff. cases—*adnominatio*) in corresponding terminal positions powerfully calls attention to the son's evil deed from the father's viewpoint, and is the type of stylistic trick so attractive to declaimers. I have marked this particular sentence as a separate extract, as suggested by H. (1972) 63, but not shown in his text.

what a scoundrel . . . . by whom he was blinded (*quam sceleratus es! plus te pater odit quam eum a quo excaecatus est*; H. 9.9-10): see H. (1972) 63; there is something difficult here; Gronov. seems to be on the right track—the father is speaking ironically. A scribe lacking the sensitivity to this aspect of declamatory style, and thinking that weeping over the son's bad character caused the father's blindness, could have changed *eam a qua* to *eum a quo* (or perhaps the latter is just a masculine indeterminate). I have marked this in my translation as a separate extract.

how pitiful is a father . . . . (*quam miser est pater, cui verum dicendum est! quam misera mater, cui mentiendum*!; H. 9.12-13): note the anaphora, asyndeton, parallel structure, ellipsis, and profusion of *m*'s to achieve a pathetic, moaning effect.

. . . that person did not pluck out my eyes (*non eruit oculos quisquis laborat, ut hoc fecerit*; H. 9.13-14): i.e., the mother, who in her concern for her son, confessed to it.

blinding his mother . . . . (*cuius crimen est excaecasse patrem, patrocinium excaecare matrem*; H. 9.14-15): note the repetition of *excaeco* (cf. also above, H. 9.8-10), chiastic structure, the contrast of *crimen / patrocinium, patrem / matrem* (cf. *pater / mater*; H. 9.12-13), and the word play *patrem / patrocinium*. H. (1972) 63 reconstructs and repunctuates the Latin here to make sense of the meaningless version

in L.; as a parallel W. (*apud* H. *app.*) cites Sen. *C. Exc.* 1.5 (97.20 Müller = H. 62.21). For the common coupling *crimen est* see Calp. 23 (H.22.13), 33 (H. 29.15), 40 (H. 33.5); cf. Weber 24.

so good a mother . . . an evil wife (*qui fieri potuit, ut mala fuerit uxor, quae tam bona mater est*? H. 9.15-16): *qui* = adv.; an ironical rhetorical question. On the contrast between the two roles of the woman see n. *ad* Calp. 1 (H. 1.18). Note the zeugma of *sceleris* & *matris* in the subsequent statement (H. 9.16-17).

but if (*sed si*; H. 9.20): H. (1972) 63-64 had originally suggested *etsi* along with Schult., but later (*app.*) suspected a lacuna at the end of the sentence as we now have it, which would then rejustify the MSS *sed si*. (See also Weber 10, who suggests *feci* here instead.)

Declamation 10

On blindness caused by weeping see n. *ad* Calp. 9. The situation seems to be as follows: after a man's two sons have died, he loses his eyesight through grief-induced weeping. Only his wife and the third surviving son remain in the household. He dreams that he will regain his sight if his third son dies, and divulges it his wife. Sensing the opportunity to be the reigning *domina* of the house if the third son dies and her husband is still blind, she deliberately tells the content of the dream to the son, who then dutifully hangs himself (on which as a preferred means of suicide in declamation see n. *ad* Calp. 8). But the husband regains his sight, realizes what his wife is up to, and blames her for son's death (note the terms he uses in connection with the event: *parricidio* [H. 10.8], *scelere* [H. 10.14], *scelerate* [H. 10.24]). See also on the background H. (1972) 64. When the husband divorces her, the wife countersues that it was unjustified. On *repudium* and *divortium* in the declamations, see Lanfranchi 229-239 (and esp. on the free usage of *repudium*, ibid. 231 & n. 7); on *iniustum repudium* ibid. 238-239; also Bonner 94-95, 122-124. The wife's side does not appear, but hints on how to manage this particular line of argument are found in Sen. *C.* 2.5.17. See also Calp. 35; cf. 22.

he divulged the dream to his wife; she revealed it to their son (*somnium uxori indicavit; illa filio prodidit*; H. 10.4): i.e., he told her in confidence something which never should have been passed on to the son. *Prodo* often has a negative connotation in this sense (*OLD* s.v. 8 b; but it is used neutrally—or ironically—in Calp. 17 [H. 17.14]), whereas *indicavit* means to pass on information in a normal manner to a spouse; cf. in a somewhat analogous situation *MD* 10 th.: *quae amissum filium nocte videbat in somnis, indicavit marito.*

since (*si*; H. 10.7): *si* here = *siqidem, quoniam* (H. *app.*). See Lanfranchi 657, s.v. *si* (citing *MD* 2.17 [= H. 36.3]); also *OLD* s.v. 12 a; cf. Calp. 53 (H. 40.7). Pith. & Schut. would read *sic*. Gronov. & Obrecht prefer to delete *si.*

murder of my son (*parricidio*; H. 10.8): a strong word; the father blames his wife for their son's suicide, and thus she is in his eyes a murderer.

only their father (*solus pater*; H. 10.9): in decl. women are generally portrayed as more susceptible to emotions, esp. so to the death of a loved one, and thereby can become blind through weeping (cf. esp.

MD 6 & 16 passim; also see n. *ad* Calp. 9). The father here is saying that he deeply loved his son, his cruel wife did not, and so she could not feel the similar grief which resulted in his blindness.

can it be said that . . . . (*numquid discutiunt recti necessitatem qui aliquid amore fecerunt*?; H. 10.11-12): the father is dissociating himself from any blame for his son's death through revealing the dream to his wife, something he did because of his love for her, being unaware and innocent at the time of her evil designs. Or, his disclosure of the dream to her, a woman to whom he is tied by the bonds of love, does not absolve her from acting properly; i.e, not telling the son about it (D.A. Russell, *per litt.*).

the compassion felt by me (*miserationem meam* H. 10.15): cf. H. (1972) 64 (in following Schult.'s reconstruction of the sense here), "Later on one understands that the mention of *miseratio* is only irony, since the husband accuses his wife of having wanted to get rid of her last son . . . ." The alliteration here and also the profusion of *m*'s in the sentence impart a pathetic tone. Dess. suggested *<somnium>* before *miserationem* (*apud* L. *app.*); rightly rejected by Meister 236; H. (1972) 64.

after (*post<quam>*; H. 10.15): Schult.; H. (172) 64.

my mind shudders to repeat (*horret referre animus quod paenitet indicasse*; H. 10.16): cf. Liv. 28.29.4: *horret animus referre quid crediderint homines . . . .*

we must not seek remedies . . . . (*nec remedia quaerenda sunt ubi maior<is> supplicii sanatio*; H. 10.16-17): cf. Calp. 36 (H. 31.6-7): *vos cogitate, quanto sint mala illa graviora, quorum sunt etiam remedia crudelia* & n. *ad loc.* I.e., the cure of the father's blindness is the death of his son. See H. (1972) 64, agreeing with Gronov.'s *maior<is>*; alternatively he suggests *ubi immanior suppliciis sanatio.* L.'s text (*nec remedia quaerenda sunt, ubi maior suppliciis sanatio*) in any case cannot stand.

the father ought to rejoice that . . . . (*gratulandum patri est quod . . . .* ; H. 10.18): a Ciceronian usage; *TLL* s.v. *gratulor* 2258.25; see *DMin* 335.9; cf. 309.6. On the use of the word generally in the *DMin* see W. n. *ad* 295.2.

his mother alone (*sola mater*; H. 10.19): cf. *sola* (H. 10.21); also *solus pater* (H. 10.9). The opposition is quoted; she must hear this, since she alone can take precautions against his suicide, or also, since

she knows that the blindness is reversible, she can hope that eventually her husband will regain his sight (cf. Schult.).

but I summon my wife . . . . (*arcesso coniugem: "iam," inquam, "esse caecus cupio. etiam nunc apud me latet quod sola tu nosti."*; H. 10.20-21): something is wrong in H.'s division of separate extracts here. *Etiam* should not begin a separate extract, since it is part and parcel of the immediately preceding quotation, and I have so marked it. The husband had previously quoted the wife's *patronus* (H. 10.18-20), but now he emotionally summons her face-to-face to hear his complaint. The pathetic outburst, *esse caecus cupio*, is reminiscent of *mori volo*, so common in decl.; see n. *ad* Calp. 8 (H. 8.15).

at the sudden advent of my vision (*subito aspectu somnii*; H. 10.21-22): H. (*app.*) interprets it as *insolite dictum pro: cum subito videre coepi*. The *subito* is to be taken as an adj. agreeing with *aspectu* (H. so lists it in his *index verborum*, p. 58); cf. sim. Sil. *Pun.* 13.831; 14.165. As an adv. see Calp. 17 (H. 17.13); 25 (H. 24.5); 42 (H. 34.3).

indignation joined with disaster (*invidia cum calamitate*; H. 10.24): cf. *MD* 11.2 (H. 220.21-22): *calamitatum suarum invidiam*; also *MD* 14.1 (H. 287.12-14).

to see through the agency of a sinful act (*ut scelerate viderem*; H. 10.24): H. (1972) 64 rightly refers to Schult.'s suggestion of *scelera tua* as attractive, but does not mention it in the *app.* Further it would provide a nice play on the literal and figurative meanings of *video* ("see" / "realize") and *caecitas* (blindness in the physical or mental sense). My punctuation is based on H. here.

I saw for the first time what I had seen the last time . . . . (*vidi miser primum quod ultimum videram: pendebat extinctus et contentus laqueus adulescentis colla tenuebat*; H. 10.25-11.2): presumably the last thing the father "saw" was the vision in his dream of the son's death. Dreams could be extremely vivid to Romans, thus the use of *visus* in such contexts (*OLD* s.v. 2 b); cf. Suet. *Aug.* 91.2 and Schult. Alternatively (cf. Burm.), the speaker could be speaking in generalized terms of the death of the two sons previously. Least likely would be the death of the second son in the exact same manner as the third. Another option (suggested by D.A. Russell, *per litt.*) would be to read *vidissem* for *videram*: "I saw for the first time what I would have wished to have seen for the last time" (i.e. having been struck blind once again, or dying on the spot). Now, with his blindness cured by the third son's suicide, the first thing he sees is that son hanging (cf. H. 27.9-10). Note

the pathetic effect of this passage. On hanging and other means of suicide see n. *ad* Calp. 29 (H. 27.6-8).

Oh, how you supposed ...! (*o, quam putasti nec maritum posse sanari!*; H. 11.3-4): somewhat ironical, suggesting that the mother informed the son so that he would commit suicide. She would then dominate the household, since her husband was blind—she did not really expect him to regain his sight; see discussion in n. *ad* Calp. 10. H. *app.* suggests *o quam optasti*?, who may well be right, joined by D.A. Russell (*per litt.*).

now is the time .... (*iam tempus est fletuum, immo iam tempus est caecitatis*; H. 11.4-5): cf. Calp. 30 (H. 28.5-6): *dixit ut amator, dixit immo ipse iam parum sanus* (cf. Weber 23). Note the highly emotional style, with asyndeton, emphatic repetition, parallelism, and the profusion of *m*'s.

Declamation 11

On the rich man vs. poor man theme (where they are usually enemies) see also nn. *ad* Calp. 6 (H. 6.13) & *ad* 17; on adoption, nn. *ad* Calp. 30, & esp. 53, a somewhat similar situation. On adoption generally in decl., see Lanfranchi 205-211; in Roman society, see the bibliography in Rawson 246; on killing a guilty party caught in adultery, nn. *ad* Calp. 48, 49; on aspiring to tyranny, nn. *ad* Calp. 6 (& nn. *ad* H. 6.19-20), 23, 31; and on tyranny in general, n. *ad* Calp. 1. The poor man throughout tries to demonstrate that the rich man's reconciliation with him was a sham. His goal was to effect the adoption, then to take his revenge on his enemy through his sons; for a similar type of revenge, aee Calp. 7 & n. *ad* th.; also Calp. 53. The text does not clearly implicate the rich man in framing the youths for their crimes, or in any other direct capacity, although there is a hint of this in the outburst concerning the novelty of a poor man's son attempting to become a tyrant (H. 11.15-16). More directly, the poor man seems to be calling attention to the rich man as a parent; the youths have been spoiled by wealth and indulgence (cf. esp. H.11.21-12.2).

the rich man received the full measure . . . . (*quicquid esse potuit in paupere, totum dives accepit*; H. 11.13-14): cf. in a sim. situation Calp. 7 (H. 7.13-14): *quicquid auferri potuit, amisi.*

and if this man (*qui si*; H. 11.14): connecting relative; see n. *ad* Calp. 7 (H. 7.11).

a strange kind of reckless conduct . . . . (*novum audaciae genus: tyrannidem affectat pauperis filius*; H. 11.15-16): cf. Calp. 15 (H. 16.5): *novum genus damnationis* (where an *est* must likewise be supplied; see n. *ad loc.* & H. [1972] 66); also *DMin* 338.13 *inventum est novum exheredandi genus*; cf. 255.9 & W. n. *ad loc.*, citing 283.3; 366.4; Liv. 2.45.4; Sen. *C.* 2.4.2; Sen. *Ir.* 3.20.1. Here *audacia* occurs in its sense of outrageous political conduct; see Ch. Wirszubski, "*Audaces*: A Study in Political Phraseology," *JRS* 51 (1961) 12-22 (esp. 17-18); E. Badian, "Manius Acilius Glabrio and the *Audacissimi*," *AJP* 96 (1975) 67-75; L. Sussman, "Antony the *Meretrix Audax*: Cicero's Novel Invective in *Philippic* 2.44-46," forthcoming in *Eranos*. The tone here is ironic; cf. Tabacco (1985) 28. On wealth as a cause of tyranny cf. Calp. 6 (H. 6.19- 20): *supra civilem hanc peraequationem divitiae te elevaverunt* & n. *ad loc.* Here it would appear that the poor man is expressing his belief that the charge was false, unless the absurdity of the situation is that the son, once poor, has been corrupted by his new status of wealth; see n. *ad* Calp. 11.

wealth . . . . (*divitiae inconstantium animorum [in] summa pernicies*; H. 11.19-20): cf. Sal. *Rep.* 1.7.3: *pecuniae, quae maxuma omnium pernicies est, usum.* Discussions of wealth and its bad effects are a favorite commonplace of declaimers; see Bonner 61 (& exx. there cited); n. *ad* Calp. 6 (H. 6.13). The text is troubled: (1) Pith. & H. delete *in*; (2) the line of thought breaks off sharply; H. (*app.*; cf. Schult.) posits a lacuna after this sentence, and suggests the addition of some such phrase as <*fac eum*>, which I have supplied as the beginning of the subsequent sent. D.A. Russell (*per litt.*) adds the possibility of <*potest*>, and suggests the beginning of a new extract.

for unruly behavior allowed free rein . . . . (*permissae licentiae magna securitas est potestas cum moderatione*; H. 12.1-2): for *securitas* in the sense of "safeguard," cf. *MD* 1.4 (H. 5.7). The sons have been spoiled by the rich man's wealth and lack of discipline over them; the last son can only be saved if he is restored to the real father's absolute legal power over him (*potestas* here implies *patria potestas*) and strict regimen (*moderatio*); cf. Cic. *Ver.* 20: *omnia in unius potestate ac moderatione vertentur.*

. . . so that we would not still appear to be enemies (*ne adhuc videremur inimici*; H. 12.3): ironical; the poor man realizes that the deaths of the two sons can be laid at the rich man's door, and this is the price he paid to make official their reconciliation—letting the rich man adopt his three sons.

Declamation 12

The title is lacking in the main MS tradition (BC) but elsewhere is supplied in terse form from the information in the argument (B2, MN; cf. H. [1978] X). The same case is found, but with more informative titles, in Sen. *C.* 9.6 (*filia conscia in veneno privigni*) and *DMin* 381 (*noverca torta filiam consciam dicens*). For discussion of the similarities among the three see: Bornecque 30-32; W. nn. *ad loc.* Sen. *C.* 9.6 & *DMin* 381; but esp. Dingel 26-32. A major difference is the omission of the suspicious symptoms, *ambiguis signis*; see n. *ad* H. 12.7; cf. *DMin* 381 th.: *ambiguis signis*. Other instances of poisoning occur in Calp. 13, 35, 40; cf. Sen. *C.* 3.7; 4.7; 6.4, 6; 7.3; 9.5, 6; *DMin* 246, 319, 321, 350, 354, 377, 380, 381; *MD* 13, 14, 15, 17. On the general terms of the legislation regarding poisoning, the *lex Cornelia*, see Bonner 111-112; on the law stated here (*veneficii rea torqueatur donec conscios indicet*) see Bonner 112; cf. Sen. *C.* 9.6; *DMin* 381. Such poisoning cases in real life would come before a standing court (*quaestio de sicariis et veneficis*). On poisoning in declamations see Simonds 89-92 (discussing Sen. *C.* 6.6) & Lanfranchi 483-488 (where all poisoning cases in decl. are cited and classified); Sussman n. 1 *ad MD* 14 (p. 254); Tabacco (1985) 16 & n. 39. On the subject in general see the good survey in Kaufman. Under the terms of the *lex Cornelia* an accomplice would be liable to prosecution. A free person was not usually subject to torture; ordinarily only slaves were so treated (as the slave girl here; cf. Calp. 40); cf. *MD* 7 passim; Lanfranchi 551-552; Bonner 112; Tabacco (1985) 102 & n. 275. Exceptions were made however for *maiestas*, *perduellio*, and for free persons practicing magic, under which poisoning was apparently subsumed (Q. 7.3.7). (An interesting declamation theme is stated in Q. 9.2.81 in which a man condemned for attempting to become a tyrant can be tortured to reveal his accomplices; cf. *DMin* 307 th. where a *proditor* can also be tortured for the same reason.) Bonner 112 concludes that torture of a convicted poisoner to reveal accomplices "may well have been the practice of the *quaestio de veneficis* under the Empire . . . ."

both infants grew up (*adoleverunt ambo infantes*; H. 12.7): cf. below: *adoleverunt ambo* (H. 12.13). This statement, which does not occur in the similar Sen. *C.* 9.6 & *DMin* 381 themes, makes it impossible for declaimers to indulge in the foolish defense posture roundly criticized by Sen. (e.g., *C.* 9.6.6, 10-11, 13; also cf. W. n. *ad loc.* *DMin* 381.1; Dingel 31; cf. 27-28, 30) that the daughter was an infant and

thereby incapable of being an accomplice. She is to be considered the daughter of the father and the stepmother, half-sister to the poisoned son, as it appears more clearly in Sen. *C.* 9.6.3, 6, 16.

suffering from suspicious symptoms (*ambiguis signis*; H. 12.7): cf. Calp. 35 th.; these would normally be *livores et tumores*; cf. *DMin* 354 th. & W. n. *ad loc.*, but esp. *DMin* 319 th. & W.'s extensive n. *ad loc.*, with full citation of the symptoms in decl.; note also the symptoms in real life: Cic. *Clu.* 30; Tac. *Ann.* 4.8. The symptoms are classified four ways: (1) no symptoms stated: Sen. *C.* 9.6, (2) under suspicious circumstances; circumstances / indications unsure: Calp. 12 th. (*ambiguis signis*; cf. *DMin* 381 th.), (3) symptoms uncertain, suggesting indigestion or poison: Calp 35 th. (*signis ambiguis cruditatis et veneni*); Calp. 40 th. (*dubiis signis cruditatis et veneni*; cf. Sen. *C.* 6.6 th. [*dubiis signis cruditatis et veneni*] & W. n. 1 *ad loc.* [I, 516]); *C.* 9.5 th. (*dubia cruditatis et veneni signa*); *DMin* 319 th. (*ambiguis signis cruditatis et veneni*), and (4) positive indications: *DMin* 354 th. (*livores et tumores in corpore*).

the father accused his wife and secured her conviction (*pater uxorem accusavit et damnavit*; H. 12.8): cf. *DMin* 313 th.: *accusavit quidam et damnavit*. While here and in Sen. *C.* 9.6 this is made clear, it is glossed over in *DMin* 381 th. (with simply the statement *confessa*), as is the actual initiation of legal proceedings against the daughter.

this stepmother . . . . (*noverca filios nostros aut insimulatione persequitur aut veneno, quae scelus suum et in domo veneficae et in suppliciis docuit parricidae*; H. 12.11-13): on *filios* see Weber 18-19 (cf. Lehnert *JAW* 113 [1902] 110) who considers this usage of the masculine for both sexes as evidence of authorship in the late 2nd century AD, when it became common. But see, e.g., Var. *R.* 2.10.9; Q. 9.3.63; cf. the use of *fratres* for *soror et frater* in Calp. 44 (H. 35.3 & n. *ad loc.*). For the use of *docere* in a similar sense and construction see Calp. 14 (H. 14.13): *equidem nec avarum me fuisse nec impium docui.* This entire first sentence is elaborately crafted; note the emphatic and emotionally charged *noverca* in the initial position; the powerful juxtaposition of *filios nostros* to it; the parallel coordinating uses of *aut ... aut* and *et ... et*; the zeugma of *in domo* and *in suppliciis*; the strong final word, *parricidae*, referring back to the initial *noverca* in a ring structure, and placed in parallel to the preceding *veneficae*. Thus she starts out as a *noverca*, bad enough, although she is in reality the girl's natural mother and stepmother only to the boy, then degrades into a poisoner (*venefica*), and finally into a murderer of a family member (*parricida*). This latter word I have simply translated here as "parri-

cide" for the lack of a convenient and sufficiently strong English to denote the murderer of a family member (not necessarily the killer of a father; *OLD* s.v., 1 a, b, c); see n. *ad* Calp. 4. Not only did she poison her stepson, but by (falsely) implicating her own daughter, she would be likewise responsible for her death, and thereby her murderer as well.

Oh how foolishly cruel the stepmother was! (*o novercae stulta crudelitas!*; H. 12.15-16): cf. below, *novercae quieta crudelitas* (H. 12.19). This is reconstructed from the MSS & L.'s *o noverca! est alta crudelitas* by Obrecht & H. (1972) 64-65. Cruelty is the traditional quality of the *noverca* in decl.: . . . *et saeviores tragicis novercae* (Q. 2.10.5); cf. n. *ad* Calp. 22 (H. 20.23) also *ad* 4.

accomplice (*conscia*; H. 12.17): cf. *conscientiae* (H. 12.20); see Dingel 28-29. The girl has been portrayed as a loving sister, and naive (cf. Dingel 28-30). In either event she could not be an accomplice to murder. The *stulta crudelitas* of the mother (H. 12.16) lies in murdering the son so that the daughter alone would be left in the household (as heiress, eventually, and also to strengthen the new mother's position), and then to name her as an accomplice (to spite the father) so that she would also be executed. See also W. n. *ad DMin* 381.1.; Dingel 30.

anger knows no limits of lying (*modum non habet iracundia mentiendi*; H. 12.20-21): the interpretation of this gnomic statement was suggested by D.A. Russell (*per litt.*), who suspects that it may be a separate excerpt.

Declamation 13

The same theme with very sim. wording occurs in Q. 7.2.25 (cf. *RLM* 377.16-21), cited in Q.'s discussion of conjectural cases of mutual accusation. Q. then continues: *nam ut illic factum in adversarium transferentium, ita hic sibi vindicantium personae, causae, facultates, tempora, instrumenta, testimonia comparantur.* For Greek sources see Russell 33 (citing Walz 8.403). On the reward for killing a tyrant, and also its relevance to a Roman context, see n. *ad* Calp. 1; cf. Calp. 22. For fuller discussion of the law and its appearance in decl., see Lanfranchi 381-383; Bonner 104. Fully stated the law would read: *tyrannicida optet quod volet* (*DMin* 288.1; cf. 345 th.). On a dispute for the reward between rival claimants, see *DMin* 345 (& W. n.); 382; cf. 282; also Sen. *C.* 3.6; Q. 7.2.25. On doctors in decl., usually an unsavory lot, see Sen. *C.* 4.5 & W. n. 1 *ad loc.* (I, 450); cf. *C.* 6.7; *DMin* 268 passim (& W. n. *ad* th.); 321 passim (& W. n.); but esp. *MD* 8 passim, on which see also G. B. Ferngren, "A Roman Declamation on Vivisection," *Trans. and Stud. of the College of Physicians of Philadelphia* (Philadelphia College of Surgeons) 4 (1982) 272-290. A somewhat similar situation involving poisoning occurs in *DMin* 321; cf. W. n. *ad* th.; also Q. 7.2.25 (cf. 7.2.17); *RLM* 377.16-21 (cf. 327.33-35). See Tabacco (1985) 36-37 & esp. 36 n. 85 for discussion of the Alexander the Great background. Generally, on poisoning see n. *ad* Calp. 12.

suspecting that he had been given poison (*suspicatus sibi venenum datum*; H. 13.2-3): cf. the sim. *DMin* 321 th.: *dixit suspicari se venenum sibi datum*; also Q. 7.2.25 (cf. *RLM* 377.16-17). See also n.*ad* H. 13.21-14.1 on fears and suspicions harbored by tyrants.

castle (*arce*; H. 13.3): the traditional residence of a tyrant; see n. *ad* Calp. 1 (H. 1.5).

he steadfastly denied it (*pernegavit*; H. 13.4): the usual term for persistent denial under torture; see n. *ad* Calp. 7 (H. 7.14).

the city's doctor (*medicum civitatis*; H. 13.4): i.e., the public physician; cf. R. Jackson, *Doctors and Disease in the Roman Empire* (Norman & London 1988) 57 (I am indebted to D.A. Russell, *per litt.*, for this reference).

God forbid (*absit*; H. 13.7): = *procul absit*; followed by *ut* & the subj.; cf. Luc. 10.525; Apul. *Met.* 2.3 (*OLD* s.v. *absum* 5 b). See also the somewhat sim. Sen. *C.* 1.3.4 (H. 28.17); *DMin* 268.22; *MD* 6.15 (H. 127.2).

august members of this tribunal (*sanctissimi iudices*; H. 13.7): cf. Calp. 48 (H. 37.6). On this terminology see Weber (1897) 251-252, who would like to assign the appellation to the senate acting as a court, although Calp. 48 would not appear to be such an instance; cf. Lehnert *JAW* 113 (1902) 110-111; *OLD* s.v. *sanctus* 1 b. See also *DMin* 266.10; *MD* 8.2, 16; 16.1, 2; 17.5, 20. The formulation does not occur in Cicero.

they lost the means of curing him (*sanandi rationem perdiderunt*; H. 13.9): *rem & remedium* found in the MSS make no sense here; see H. (1972) 65 where he suggested *sanandi spem* or *s. <operam>*; but then in his text (cf. *app.*) accepted W. Schaub's easier suggestion of *rationem*. Cf. e.g., *MD* 8.16 (H. 167.3): *ratio sanitatis*; also *MD* 8.20 (H. 172.4-5): *nec frater hac vellet ratione sanari.*

consider my punishment.... (*poenas meas hinc cogitate in quibus nec ira nec natura cessavit*; H. 13.10-11): the castle doctor here is attempting to explain why, under cruel torture (*poenas* here = *cruciatus*; see Weber 21), he did not (apparently) confess to the poisoning, a point undoubtedly used by the opposition to strengthen its claim for the reward. The following sentence (*tolerabilis vis est ubi ad consuetudinem mali causa necessitatis emergit*) further underscores the point that the tyrant was not really interrogating him since he was convinced that the castle doctor had poisoned him and was merely administering punishment (an aspect of his cruelty; cf. Tabacco [1985] 98, 108). For a similar sentiment see *DMin* 328.11 & W. n. *ad loc.*, who further cites *DMin* 328.12; & esp. *MD* 19.12 (H. 384.21-22: *torquebam nec interrogabam*); cf. *MD* 19.9 (H. 381.17-18); also Tert. *Apol.* 2.15. I have transposed the text *ultio .... vindicavit* (H. 13.13-15) to follow *emergit* (H. 13.12), as suggested by H. (1974) 57, and have further treated it as an amplification of H. 13.10-12, rather than as a separate extract; cf. H. (1974) 57-58. I have adopted Gronov.'s *<non>* (cf. H. [1974] 57), but have kept *se* instead of Gronov.'s attractive but unsupportable *sed*, since *vindico* in its sense here needs an object; cf. H. (1974) 57-58 (unless perhaps originaly it was *sed se*).

Oh, how easily... (*o quam facile + regunt persuasiones illeceb<rae ver>umque in contrarium transferunt! +*; H. 13.15-16): the restoration of H. (1974) 58 (cf. *app.*) for the certainly corrupt: *O quam facile + gerunt persuasiones illecebramque in contrarium transferuntur +* (H. 13.15-16). However, H. admits the possibility that *gerunt* may stand, as equivalent to *regunt*.

the poisonous brew (*virus*; H. 13.16): I have marked this as the beginning of a new extract; certainly there is a break in thought. The

term occurs only here in Calp. and has a poetic flavor (note the imagery of *serpebat* and the profusion of *s* sounds: *virus serpebat interius et artus omnes* . . . [H.13.16-17]), used often elsewhere as a more elegant variant of the standard *venenum* (which occurs seven times in Calp. 13); cf. Ov. *Met.* 14.403: *illa nocens spargit virus sucosque veneni*; cf. *DMin* 321.12. *Virus* is much more common in the *MD*; H. (1982) index s.v. records 11 occurrences.

by what means . . . ? (*unde venenum tam celeriter praeparasti?*; H. 13.19-20): cf. *DMin* 307.10: *unde tibi venenum, ad quos casus parasti?*; also 246.4: *unde tibi <in> hos usus venena?*; cf. W. n. *ad loc.* & parallels there cited. Poisons conventionally required elaborate preparation; see the comprehensive discussion of the subject in Kaufman.

well, there exists this naturally occurring type of <fear> (*nativum hoc genus <ti>moris est*; H. 13.21-14.1): so H. (1974) 58, following Gronov.; *moris* certainly is not impossible, but the context supplied by *sollicitudo* & *formido* (H. 14.1, 3) argues strongly for the change. The declaimer is saying that, knowing he was poisoned, the tyrant would surely be more careful with his second doctor, both in the choice, and in his attitude towards taking another drug. Of course a tyrant would characteristically be suspicious (cf. H. 13.2-3 & n. *ad loc.*), especially of possible poisoning; see Tabacco (1985) 36-37; cf. 34 n. 81.

in that castle . . . . (*in arce me nec animus deseruit nec venenum*; H. 14.4-5): so H. (1972) 65 for the cryptic ("This means nothing at all.") *in arce enecavimus: deseruit nec venenum* of the MSS (cf. L.). Note the zeugma of *animus* & *venenum.*

Declamation 14

An *addictus* was a free man assigned because of unpaid debt to serve his creditor in the capacity of a slave until the obligation was satisfied. Thus his status was not quite that of a slave, since he only served temporarily; see Q. 5.10.60: . . . *aliud est servum esse aliud servire; qualis esse in addictis quaestio solet: qui servus est, si manumittatur, fit libertinus, non item addictus.* Cf. Q. 3.6.25; and esp. 7.3.26-27: *circa propria ac differentia magna subtilitas, ut cum quaeritur an addictus, quem lex servire, donec solverit, iubet, servus sit. altera pars finit ita, servus est, qui est iure in servitute; altera, qui in servitute est eo iure, quo servus, aut, ut antiqui dixerunt, qui servitutem servit. quae finitio, etiamsi distat aliquo, nisi tamen propriis et differentibus adiuvatur, inanis est. dicet enim adversarius, servire eum servitutem aut eo iure quo servum. . . . . servus, cum manumittitur, fit libertinus, addictus recepta libertate ingenuus; servus invito domino libertatem non consequetur, addictus solvendo citra voluntatem domini consequetur: ad servum nulla lex pertinet, addictus legem habet. propria liberi, quod nemo habet nisi liber, praenomen, nomen, cognomen, tribum; habet haec addictus.* For further discussion see the arguments in *DMin* 311 & W. nn. *ad loc.*; cf. *MD* 3.17; Lanfranchi 200-203. The case here hinges on the definition of slave, as considered by Q.: whether, as the disinherited son here contends, the father as an *addictus* was in fact and in law a slave, so that, when freed through the intercession of his son, he became a *libertinus*, and thereby the disinherited son was in the relationship of a *patronus* to his *libertinus* father. For if that is the case, he is the legal heir, since freedmen were supposed to include their *patronus* in their wills; see A. M. Duff, *Freedmen in the Roman Empire* (Oxford 1928) 43-44; cf. *DMin* 388.23 & W. n. *ad loc.* For general discussion of the relationships among slaves, *liberti*, and *patroni* in Sen. *C.* (& relevant to Calp.), see Migliario 533-538. However, the more usual view, supported by the law as Q. records it, holds that an *addictus*, after his debt is paid, reverts to his former state as an *ingenuus*, and does not become a *libertinus*. On the law forbidding an *abdicatus* from any share of his father's estate see Lanfranchi 262; Bonner 102 & n. 4 (also his good general discussion; 101-103); *DMin* 374 & W. nn. *ad loc.*; also Spengel 2.169.22. On disinheritance itself (*abdicatio*) see n. *ad* Calp. 18.

<since> (*qui<a>*; H. 14.11): Klotz & L.; H. prefers *qui*, but some balance is needed here to coordinate with the preceding *iure patroni.*

but look, a former master . . . . (*at haec ipsa patronus liberto suo contulit quae filius a parente percepit*; H. 14.17-18): the declaimer con-

trasts the two key verbs *contulit* and *percepit*. The former indicates an act that was done purposefully, at the disinherited son's discretion; the latter emphasizes a lack of conscious purpose—that in the normal course of events a son naturally "reaps" certain benefits from his father, as seen in the basic meaning of *percipio*, "to take (natural) produce from the place of growth . . . harvest" (*OLD* s.v. 1). This idea is carried further with the subsequent contrast of *datur* (H. 14.18), "is given away," (i.e., the inheritance is just left to a son), to *redditur*, "is rightfully restored," (i.e., as the debt to a former master who granted him freedom).

the law dealing with disinherited sons (*abdicatorum* . . . *legem*; H. 14.21): the word *lex* plus a plural substantive is a regular way to cite a commonly occuring law in a convenient, abbreviated manner; e.g., *lex raptarum* = *rapta raptoris mortem aut indotas nuptias petat* (cf. Calp. 34 [H. 29.18, 20-21]); cf. the themes of Calp. 16, 25, 41, 43, 46, 51; also n. *ad* Calp. 16; cf. e.g. *DMin* 301 th.; see esp. W. n. *ad DMin* 249.14, with additional citations. The disinherited son replies to the other son's charge that as an *abdicatus* he has no legal right to the estate; he retorts here that this is not the point, since he concedes this. Rather, he holds, he is his father's *patronus* and thus deserves the estate: *utor patroni actione, non filii* (H. 14.22).

privy purse (*peculium*; H. 15.1): the money earned or otherwise acquired by a slave which he retained in his possession, although strictly he was incapable of legal ownership. When he had obtained a sufficient amount, he could buy his freedom; see n. *ad* Calp. 33 (H. 29.13-14); cf. *MD* 13.14 (H. 281.5; the only other occurrence of the word in decl.).

this fine son (*hic bonus filius*; H. 15.4): ironic.

couldn't that son, with his status intact, set him free . . . . (*filius incolumi dignitate non potuit explicare quantum abdicatus explicuit?*; H. 15.5-6): the declaimers were fond of repeating the same verb in a different form (*explicare* . . . *explicuit*), especially in an antithetical statement, as above, *servit* . . . *servire* (H. 14.20). Related to this device is the repetition of variants of a verbal stem; e.g., *datur* . . . *redditur* (H. 14.18- 19); less so is the repetition of verbal prefixes in *experirer* ... *expellerer* (H. 14.21-22). On *dignitate*, referring to the status as a son, cf. *DMin* 298.1 & W. n. *ad loc.*, who cites also 330.2, and compares Sen. *C.* 1.8.11; cf. Dingel 42 & n. 107.

about his son's lack of filial devotion (*de huius impietate*; H. 15.7): *simplicitate* (*codd.*); Schult. was suspicious and suggested *sua* for *huius*.

But as H. (1972) 65-66 rightly concluded, the word needed here is *impietate* (cf. *impium*; H. 14.12), with the terminal *s* of *huius* mistakenly coupled to the succeeding word yielding the easily confused form *simpietate*.

legal rights as a father (*ius patrium*; H. 15.8): cf. Calp. 4 (H. 4.11) *iure patris*, & n. *ad loc.* The disinherited son subtly strengthens his argument that the father's status as an *addictus* is equivalent to slavery, since he has lost the prerogatives of *patria potestas*.

that estate . . . that . . . that . . . . (*tu illud prius consumpsisti patrimonium, illud amplum, illud quod <d>uobus . . . .*; H. 15.10-12): an emphatic and impressive three member anaphora (cf. in this decl. *quotiens* [twice; H. 15.6-7] & *hic* [H. 15.8]), here (with asyndeton) of the demonstrative; cf. the 4 member anaphora of *hunc* (Calp. 28; H. 26.18, also with asyndeton). Gronov. suggested *<d>uobus* for *nobis* (*codd.*), *vobis* (Burm.).; accepted by H. (but not L.).

freedman (*libertinum*; H. 15.12-13): on the position of freedmen at this time, see n. *ad* Calp. 14.

Declamation 15

On capital punishment for desertion see Calp. 27; cf. 26, 32; also Calp. 36 (slavery is the punishment). This law has strong Roman parallels; desertion fell under the category of *proditio* (treason) according to Bonner (109-110), and was capital in the early Republic as well as the Empire. For other variants of the desertion theme see *DMin* 246 (& W. n. *ad* th.), 287, 304, 315, 375, 387; cf. 317, 348, 371; also, in general, Lanfranchi 425-431 (he also includes discussion of *transfugae*; cf. *DMin* 255, 348). The law providing an exemption from military service for those cited three times for heroism occurs in Sen. *C.* 1.8. Bonner (88-89) holds that it is supported by some evidence, but "would certainly not have given rise to the kind of legislation the declaimers envisage." W. n. 1 *ad* Sen. *C.* 1.8 th. (I, 176) calls it "a declaimer's fiction." The law allowing a reward for a victorious general probably falls under Bonner's previously quoted remark; it appears in exactly the same wording in *DMin* 285. Rewards for war heroes in general are frequent in this collection: Calp. 25, 26, 27, 32 (a somewhat similar case to this), 36; cf. 21, 28, 29. For other references see Lanfranchi 389-390; Bonner 88; W. (1984) 597. For a war hero requesting the withdrawal of punishment for desertion see Calp. 26, 27, 32; *DMin* 287 (& W. n. *ad* th., who cites *DMin* 371 [cf. 387]; 375; *RLM* 88.3; Q. 7.7.6). See also *DMin* 249; cf. 294, 315 & W. n. *ad* th.

if he should see as a willfully disobedient deserter any man whom he had recognized as an obedient war hero (*si quem virum fortem senserat obsequentem, desertorem videat contumacem*; H. 15.20-21): note the elaborately parallel construction of the clauses, the balanced number of syllables in each (excepting the *quem*), and the antithetical juxtaposition in parallel of *virum fortem* & *desertorem*; *obsequentem* & *contumacem*. Here *obsequentem* is in its positive sense; cf. *TLL* s.v. *obsequens* 188.44ff & esp. 188.73ff (citing this passage: 188.80-81; *OLD* s.v. 3).

I can neither make objection .... (*nec poenam possum recusare post culpam nec veniam sustinere post gloriam*; H. 15.21-23): again, parallel construction. The declaimer spits out his indignation with an explosive alliteration of *p*'s. *Sustinere*, "bear the weight of," helps to strengthen the picture of the former war hero as an old man, unjustly forced to take up arms again despite his years and deserved exemption; his desertion, as the declaimers would have colored it, was probably occasioned by his age, weakness, and unfitness any more for military

service (Schult.); as here, e.g., *non ante rem publicam quam me ipse deserui* (H. 15.24); *oneravi* (H. 16.1); *in hac aetate* (H. 16.3); *senex* (H. 16.6).

I am in agony (*miserum me*; H. 15.23): only occurrence in Calp.; here the declaimer inverts the more normal Ciceronian order *me miserum* (e.g., as in *Prov.* 10; *Mil.* 102; *Phil.* 7.14) possibly to emphasize the wretchedness of his state; or possibly reflecting a change in the taste of speakers for the more unusual expression; the inverted form occurs once in Sen. (*C.* 1.8.2; but in normal order 14 times); once in *DMin* (290.4; in normal order also only once; 306.31). Note the change in the *MD* where the inverted form is normal and frequent (4.5; 6.5, 7, 8, 18; 7.13; 9.11, 21, 23; 12.28; 13.4: normal order occurs only 4 times—6.21; 11.9 [twice]; 12.7).

for my part I did not fail the state before I failed myself (*non ante rem publicam quam me ipse deserui*; H. 15.24): i.e., he was willing to fight, but because of his age (see n. *ad* H. 15.21-23), his former strength was gone and he was no match for his former self. The play here is on *deserui*, which technically means "desert (on mil. service)" (*OLD* s.v. *desero* 2 d), but here has the more generalized meaning of "leave in the lurch, desert, fail" (s.v. 2 a) or perhaps "fall short of" (s.v. 3 b); cf. Fro. *Ver.* 2. p. 138 (124N) *nomen suum deserat . . . imperator.*

with arms for both short and long range combat (*et armis et telis*; H. 15.24-16.1): a regular combination; *MD* 4.17; cf. *OLD* s.v. *arma* 2 b; s.v. *telum* 1 b.

and then—something not done without a ceremony of expiation—I laid down in surrender arms dedicated long before to the gods (*et, quod non sine piaculo factum est, consecrata iamdudum arma deposui*; H. 16.1-2): the situation here would seem to be as follows: after the war hero's third (and he thought, final) decoration for heroism, he set up his weapons and armor as offerings in a temple in thanks, probably, for his safe return (cf. e.g. Hor. *Carm.* 3.26; *Ep.* 1.1.4-5; Verg. *Ecl.* 7.24; *A.* 1.248-249; Pers. 2.68-75). When forcibly—and illegally—called back to service, he retrieved his weapons to use again, ordinarily a sacrilegious act which thereby called for a ceremony of expiation. Then, weak and unable to fight as he once did (and perhaps also because of resentment), he deserted to the enemy, and as a mark of surrender, laid down his arms, as he says, *deposui*; cf. *OLD* s.v. *depono* 1 d, (citing Cic. *Phil.* 5.3; Caes. *Civ.* 3.10.10; Liv. 5.2.7; Ov. *Fast.* 3.1). There may well be a play here on *depono*, which can also refer to depositing something in a holy place for safekeeping or as an offering,

which he did indeed do the first time; cf. *OLD* s.v. *depono* 7 a. H. *app.* explains it as follows: *non de armis depositis, sed quadam breviloquentia de consecratis armis temere sumptis (et deinde depositis a desertore)*. Cf. Schult.; Burm. suggests that he rededicated the arms in the temple after his desertion, suggesting *reposui* for *deposui*, citing V. Fl. 11.286 & Verg. *A.* 5.484. These explanations seem excessively complicated; it would be normal procedure for a deserter when he surrendered to the enemy to give up his weapons. But see Sen. *C.* 4.4 in which a hero lost his weapons in battle, then used arms taken from the tomb of a dead hero, fought heroically, and finally put the weapons back. He gets the hero's reward, but is prosecuted for sacrilege; cf. the similar *DMin* 369 & W. n. *ad loc.* who compares *RLM* 599.21ff; Q. 5.10.36; Walz 8 e.g. 78.22ff. See also W. nn. 1, 2 *ad* Sen. *C.* 4.4 (I, 446). Q. 5.10.36 discusses how questions of definition are closely connected to motives, and uses the following example: *an sacrilegus, qui, ut hostes urbe expelleret, arma templo adfixa detraxit*? On sacrilege in general, see n. *ad* Calp. 42 th.; also Simonds 94-95.

at this stage of my life (*in hac aetate*; H. 16.3): cf. *DMin* 306.19, 32 (also 306.29 *in istis annis* & W. n. *ad loc.*; note the previous *aetatis huius*); 330.7.

special privileges (*privilegia*; H. 16.5): the more generalized use of the term; cf. *DMin* 315.8 & W. n. *ad loc.*, with many citations. On the more specific and technical use of the term, see W. n. *ad DMin* 254.7; also Calp. 26 th.; pertaining to parents cf. *DMin* 378.1 & W. n. *ad loc.*

pardoning me is a new way of condemning me. I wish <to die> (*novum genus damnationis ignoscere. <mori> volo.*; H. 16.5-6): so H. (1972) 66, for the hopeless muddle in L., who has *novum genus damnationis. ignoscere volo: cur* . . . . H. has moved the period after *ignoscere* (sc. *est*; cf. Calp. 11 [H. 11.15-16]: *novum audaciae genus*), then *<mori>* or something sim. to go with *volo*; on this expression, see n. *ad* Calp. 8 (H. 8.15).

Declamation 16

As usual, in the theme this law is stated in its abbreviated version, *lex raptarum*; cf. Calp. 25 th., 41 th., 43 th., 46 th., 51 th.; the full text occurs however in Calp. 34 th.: *rapta raptoris mortem aut indotas nuptias petat.* Cf. H. (1972) 66 n. 5; on the use of *lex* plus a plural substantive to cite a commonly occurring law see n. *ad* Calp. 14 (H. 14.21). Other variants of the law are found (e.g., lacking *indotas*, substituting his *bona*, or the payment of a fine), which, in Bonner's view (89) "diminishes confidence in the veracity of the law . . . ." For other citations of this common law in decl. see Bonner's discussion 89-91. On rape and sexual violence in Sen. *C.* see Migliario 543-546. The statute contains elements of both Greek and Roman civil and criminal law which have been combined by the declaimers. After citing an allusion to a rape victim's option found in Justinian *Cod.* 9.13.1.2, Bonner reconstructs the procedure as follows (90-91): "Unless the affair was settled out of court (e.g. in the Roman *domesticum consilium*), the parent (or master) of the girl would bring a private action against the culprit (*dike biaion* or *actio iniuriarum*). The sentence would be a fine, but the alternative of marriage without dowry may commonly have been agreed upon, always assuming that *conubium* was possible. If the culprit refused both alternatives, he would render himself liable to a criminal charge (*graphe hubreos*, or for *crimen vis*, if force had been used, or *stuprum* under the *Lex Iulia de Adulteriis* if it had not). In an extreme case he might incur the death-penalty. So what the declaimers have done is to telescope the civil and criminal law (of either Greece or Rome), and present a highly dramatic position, seizing on the two most exciting features, and bringing them into a striking antithetical relationship." See also Russell 34. Cases of this type are also found to Hermogenes; cf. Simonds 64. However, this case revolves around the unstated law, *qui causa mortis fuerit, capite puniatur*; see *DMin* 270 & W. n. *ad loc.* (with many citations); cf. *DMin* 289, 292; also Lanfranchi 475-477; Dingel 95 n. 233. The *status* here *definitivus*. Q. 7.3.30-34 discusses a situation applicable to this law and calls particular attention to the point that an accuser, witnesses, and judges in capital cases could be prosecuted under the law if the definition were held too strictly, as would a person who, for example, persuaded someone to take a trip abroad, who then perished in a shipwreck. In our case the side against the magistrate naturally argues for the broader interpretation of the statute. The plain suggestion is that the young man and the girl were on the verge of getting married anyway (H. 16.15-18; see n. *ad* H. 16.16), thus the death sentence was excessive; cf. Calp. 51 where a judge follows the *humaniorem sententiam* in a somewhat similar situ-

ation (H. 38.13-14). As W. n. *ad DMin* 247 observes, the case "raises the problem of intentions raised non-verbally": he cites as esp. pertinent to this situation Sen. *C.* 2.7.6: *quod proximum est a promittente, rogata stuprum tacet* (to which cf. Ov. *Am.* 1.7.22: *egit me lacrimis ore silente reum*); also cited are *DMin* 316.3; Sen. *C.* 8.6; *RLM* 344.17; Walz 8.110-124; cf. W. n. *ad DMin* 270. The magistrate, who insisted on his utter independence and free discretion in deciding the case, is portrayed as acting high-handedly (H. 16.19-20). The major difficulty facing the declaimers was the girl's silence (H. 16.20-17.2). Normally, a speech of this sort would be delivered by the girl's closest male relative. On the variation in the number of *magistratus* (plur. in H. 16.9; sing. in H. 16.10, 11 & understood so through the rest of the decl.) see n. *ad* Calp. 42 (H. 34.1; also H. *app. ad loc.*).

said nothing and just wept (*tacuit et flevit*; H. 16.9): cf. below, *tacuit* (H. 16.20); also Calp. 18 (H. 18.11-12): *flevi . . . licet tacitus*); she was apparently embarrassed and let her weeping speak for her. The situation is romantic—and Ovidian; e.g. Ov. *Ars* 1.574: *saepe tacens vocem verbaque vultus habet*; in a sim. situation: *multa supercilio vidi vibrante loquentes; / nutibus in vestris pars bona vocis erat. / Non oculi tacuere tui* (*Am.* 2.5.15- 17); cf. *Am.* 1.7.22; *Met.* 10.500, 502; *Tr.* 5.1.49-52; note also sim. in Sen. *C.* 8.6 (H. 232.10); 10.1.1, 5; *DMin* 247 th., 16; 316.3; *MD* 6.4.

as a defendant on the charge of a single killing . . . . (*reum caedis unius . . . .*; H. 16.12): the declaimer is not so subtly charging the magistrate with being excessively harsh in the first place because he sentenced the young man to death, which then precipitated the girl's suicide. In so doing the magistrate killed the both of them (*duos pariter occidit*), a more powerful and emotionally charged phrase than simply *causa mortis fuit.*

any access to an appeal for pity in this defendant's case has been precluded. . . . (*aditus huic reo misericordiae clausus est*; *quid enim sperare poterit a lacrimis*? . . . ; H. 16.12-14): difficult, as noted long ago by Schult. An appeal for pity on the part of the magistrate (*huic reo*) is precluded because of his insensitivity to a similar appeal by the young man during the rape trial. An appeal to pity must have been a standard part of the magistrate's case in this declamation and is answered once again below: *quis te, oro, poterit aut liberare flentem aut flere damnatum*? (H. 17.3-4; cf. *misericordiae* H. 17.1; also Calp. 42 [H. 34.6]). See also Cic. *Planc.* 102: *non opibus contendo, non auctoritate . . . sed precibus, sed lacrimis, sed misericordia* (cf. Caes. *Civ.* 2.12.4; 2.44.1). Alternatively, as suggested by D.A. Russell (*per*

litt.), *huic reo* in this separate extract may be distinguished from the preceding *reum* (H. 16.12), and now refers to the young man, and the subject to be supplied for the following *poterit* is "she" (the raped girl). Her tears are, of course, an essential component of the case.

noble in his personal appearance (*facie liberalis*; H. 16.14): cf. in a slightly different context Cic. *Cael.* 6: *sunt enim ista maledicta pervolgata in omnis quorum in adulescentia forma et species fuit liberalis.* Austin says (n. *ad loc.*): "*Liberalis* (lit. 'befitting a free man') is often used of a well-bred appearance." He cites Plaut. *Pers.* 521 (with *forma*) & Apul. *Apol.* 4 (with *voltus*). Cf. e.g., Plaut. *Epid.* 43; *Pers.* 546; Gell. 2.23.8; also Weber 11 & n. 1, who cites also Ter. *Eun.* 230, 473. Note, too, Afer's pointed rejoinder in Q. 6.3.32.

nobody would fail to pray to have either as his own son.... (*nemo non sibi aut filium optet*....; H. 16.14-15): for a similar dative with *opto* cf. Calp. 17 (H. 17.11): *propitium mihi divitem semper optavi.* Note the striking litotes of *nemo non.*

he became impatient, typical for a lover.... (*festinavit ut amator*; H. 16.16): cf. Calp. 30 (H. 28.5) *dixit ut amator.* See also Weber 23. The entire sentence makes the point that the man was in love with girl and his ultimate aim was marriage. The physical act should not in the declaimer's view be considered rape, but rather as the consummation of love and thus a type of "marriage." Thus the girl could not and really did not want to lodge a formal complaint against him: *virgo, quod solum potuit, nihil questa est* (H. 16.17-18). This repeats the idea of *tacuit* in the theme (H. 16.9; cf. 16.20); see H. (1974) 59 where he also notes the parallel in Calp. 27 (H. 26.3-4): *ego tacui cum peterer; hic vivere iubetur et queritur.*

"it was my will and it was legal" ("*libuit et licuit*"; H. 16.19): a clever jingle, but quoted here to make the magistrate appear snappish, arrogant, and curt, as the declaimer says. The expression is probably from common speech; e.g., Pl. *Mos.* 20: *nunc, dum tibi lubet licetque, pota, perde rem*; cf. Cic. *Att.* 14.19.4; 15.4.3; *Fam.* 1.8.3; also *Her.* 4.34; Cic. *Phil.* 1.33; *Quinct.* 94.

is this the language of a fellow citizen or of a king? (*civis haec, an regis oratio est?*; H. 16.19-20): following Burm., H. (1974) 59 reads *civis* for the meaningless *cuius* of the MSS & L. Cf. the reverse, *cuius* for *civis*, in Calp. 46 (H. 36.10; see H. *app. ad loc.*). Note that there would be little difference in the Roman mind between a king and a despotic tyrant; see Tabacco (1985) 18 n. 46, 66-67.

he was not the presiding judge of his own court, but an assistant in someone else's (*nec erat arbiter iudicii sui sed minister alieni*; H. 16.20): the focus here is on a single magistrate, although we initially have a board of magistrates in the theme, then a quick focus on one individual (H.16.9—plur.; H. 16.10—sing.). A similar variation in the number of magistrates occurs in the somewhat different case of Calp. 42 (H. 34.1; see *app. ad loc.*). No variation, however, occurs in the rather more complex case of Calp. 51 (cf. H. 38.12, 13). The essential point here seems to be that since the girl did not make the choice, he made it for her, as the subsequent text makes clear. Thus she could have been the real *iudex* here (D.A. Russell, *per litt.*). H. (1972) 66 translates: "He was not supposed to judge himself, but to effectuate the judgment of another."

"but she said nothing," he tells us. Oh, what an eminent— and empty statement! (*"tacuit," inquit. o mira et muta sententia!*; H. 16.20-21): the judge's defense is that the girl failed to make a statement of whether she wanted marriage to the young man or his death; therefore he exercised the choice. The declaimer's rejoinder (which could also be rendered, "what a marvelous—and mute statement!", "dandy—and dumb," or perhaps "stupendous—and stupid"; H. [1972] 66 gives us "admirable, though mute") is alliterative and ironic with a tinge of oxymoron (*muta sententia*). H. (1972) 66 restores *inquit* from BC for Pith.'s conjecture *inquam* (though the latter was accepted by Burm. & L.).

eyes (*oculis*; H. 17.2): for a different view on the eyes as a source of infatuation see *MD* 1.6 (H. 7.10-13); cf. n. *ad* Calp. 22 (H. 21.2); also Calp. 2 (H. 2.15-16); 43 (H. 34.17 & n. *ad loc.*); Sen. *C*.2.7.3; *MD* 18.9.

unfortunate is that poor fellow . . . . (*miser ille quem nullo accusatore punisti; miserior illa quam te vindicare simulasti*; H. 17.2-3): note the parallel constructions, the coupling together of the two unfortunate lovers, the terminal verbal assonance (*-sti*), asyndeton, and the repetition of the adjective *miser* in its positive and comparative degrees (cf. Calp. 35 [H. 30.16]: *grave . . . gravius*), as well as the repeated demonstrative *ille* in the m. & f.

who, I ask you, will be able either to acquit you when you weep, or weep for you when you are condemned? (*quis te, oro, poterit aut liberare flentem aut flere damnatum*; H. 17.3-4): the declaimer is attempting to close off once again the judge's appeal for pity; see n. *ad* H. 16.12-14. Note the studied paralellism of the *aut* . . . *aut* clauses, focusing attention on the action of weeping (*flentem* . . . *flere*) and the

verbal contrast between the participle and infinitive forms; cf. Calp. 41 (H. 33.15-16): *perire . . . pereuntem.* On *flentem* cf. W. n. *ad DMin* 270.1.

Declamation 17

This declamation actually involves three laws: (1) The law quoted at the beginning of the theme states that foreigners who pass themselves off as citizens shall be sold into slavery (*civitatem peregrinus usurpans veneat*; H. 17.6). The exact same law occurs in Calp. 23, but nowhere else in decl.; cf. Lanfranchi 192-193, 396 (see also Q. 7.1.55; Suet. *Cl.* 15.2; *DMin* 306.17; 388.7). Note the similar titles of the two: *paedagogus cruciarius* (17) & *peregrinus cruciarius* (23); the only other occurrences of the word *cruciarius* are found in Sen. *C.* 7.6.2, 3, 6. The law appears directly to reflect Athenian legislation, but is also related to actual Roman practice, though with different penalties: loss of citizenship, or perhaps death; see Lanfranchi 192 & nn. 3, 4; 193 n. 1. (2) The son of the rich man was caught while committing adultery and killed, most probably by the husband (H. 17.8-9). On the law which allowed this see the nn. *ad* Calp. 23, 48, 49. (3) The actual trial is occasioned by the statute which allows an appeal to the tribunes in a case of alleged unjust punishment: *appellat tribunos de iniusto supplicio* (H. 17.10). The law reappears in sim. wording in Calp. 23 (H. 21.19, 25; 22.3), 33 (H. 29.10-11), 42 (H. 33.19-20; 34.2). The *paedagogus* is being led off to crucifixion, since a master had the right of life and death over his slaves. Crucifixion would be the norm in such cases (Lanfranchi 188 & n. 4, with much citation), although slaves could be tortured (presumably to death) during an interrogation (Lanfranchi 188, n. 5). Nevertheless, the master needed good cause to execute a slave (Lanfranchi 380 & n. 4). It is on this basis that the *paedagogus* lodges his appeal—that the punishment was unjust (although slaves could not legally avail themselves of the *latio auxilii* of the tribunes); cf. Calp. 23, 33, 42; Sen. *C.* 3.9; *DMin* 380 th.; see also Lanfranchi 379-380; and esp. W. n. 2 *ad loc.* Sen. *C.* 3.9 (I, 418), who cites also *RLM* 96.21; he adds: "The *tribuni plebis* had during the republic had the right to aid the oppressed (*latio auxilii*), which passed to the emperors as part of their *tribunicia potestas*. Slaves would not have been able to appeal thus, but in a declamation this could be disregarded . . . . " The rich man wants to execute the *paedagogus* / slave on the grounds that he corrupted his son and was therefore the cause of his death (on which see n. *ad* Calp. 16 th.). Before the poor man was sold into slavery, he and the rich man were enemies (and then, apparently, became reconciled). The rich man / poor man theme recurs often in this collection (see n. *ad* Calp. 6 [H. 6.13]), as it does in the rest of decl.: Sen. *C.* 2.1, 5.2, 5.5, 8.6, 10.1; *MD* 7, 9, 11, 13; cf. 14, 15; but most notable in the *DMin* (e.g., 247, 257, 269, 301, 304, 305, 337, 343, 344, 345); cf. Petr. 48.5. For extended discussion of this topic see Tabacco (1978, 1978a,

1979, 1979a); Migliario 527-533; W. n. *ad DMin* 257 th., with citation of Greek examples; the latter show political motivations for the enmity, whereas in Roman decl. the causes are generally left unreported.

charged with being an alien (*accusatus peregrinitatis*; H. 17.8): cf. Q. 7.1.55 (. . . *in filium peregrinitatis reum*); Suet. *Cl.* 15.2 (*peregrinitatis reum*).

gentlemen of this tribunal (*iudices*; H. 17.11): the case is an appeal to the tribunes and thus the term *iudices* is somewhat out of place, unless the *paedagogus* is addressing them in their specialized legal function, here to act as a board of judges in such cases of appeal (I have therefore translated the term to give it this specific flavor); cf. *OLD* s.v. *iudex* 1 d. In Calp. 23 the tribunes are appealed to directly as *tribuni* (H. 22.2, 17), but are addressed neither as *tribuni* or *iudices* in Calp. 33 or 42 (but both are very short excerpts).

I devoted myself entirely . . . (*totum me . . . addixi*; H. 17.11-12): *addicere* suggests nearly total subjection to the rich man; note how the word also provides the legal term for debt slavery (on which see n. *ad* Calp. 14 th.; also *OLD* s.v. *addico* 1 b; cf. 5, 6). Also providing a picture of the poor man's subservience is the preceding *propitium mihi divitem semper optavi* (H. 17.11)—*propitius* is most frequently used to denote a subordinate relationship to the gods (cf. *OLD* s.v. 1 a).

intervention (*auxilium*; H. 17.16): the regular term applied to such intervention by tribunes in their official capacity; cf. *latio auxilii*, discussed by W. n. 2 *ad* Sen. *C.* 3.9 (I, 418), quoted above in the n. *ad* Calp. 17; see also most frequently in Liv.; e.g., 5.29.9: *si tribunicia vis tribunicio auxilio repelli nequeat*; cf. 2.35.3; 9.26.10; 24.43.3 (also *TLL* s.v. *auxilium* 1630.53ff; *OLD* s.v. 2).

isn't it one and the same thing . . . ? (*unum non est in servitutem nasci et libertate multari?*; H. 17.17-18): for sim. construction see Asc. *Corn.* 60.11: *unum est eius modi placere legem abrogari*; cf. Cic. *Sen.* 25. Here *in servitutem nasci* picks up on the *servis iam natis* of the previous sentence (H. 17.16-17). Pith., Burm., & L. read *servitute* (following *sigma*); BC read *servitutem* which H. (1972) 66-67 argues to retain on the basis of Cic. *Tusc.* 1.5.9 etc. *Multari* here must take the normal abl. of forfeit (*OLD* s.v. *multo* 1 a; cf. *TLL* s.v. 1604.51ff; cited in 1604.70; cf. *DMin* 331.7). I owe my interpretation of this difficult sentence to D.A. Russell, *per litt.*

if illegally, indict the killer. . . . (*si iniuria, interfectorem argue; si iure, leges*; H. 17.20): a short, effective rejoinder; note the parallel

structure, anaphora of *si*, asyndeton, ellipsis, and contrasted parallel use of the adverbial nouns *iniuria . . . iure.*

yes, I suppose, I made that son of yours an adulterer . . . . (*ego illum adulterum feci, credo, ...*; H. 17.20-22): ironical, since slaves and poor men could not indulge in vices which they could not, of course, afford. Note the emphatic initial *ego* and its vivid contrast to *illum*, the rich son, who did have the resources to indulge in dissolute living.

you kept on lavishing many possessions on him . . . . (*multa largiebaris, indulgebas omnia, nihil umquam negabas*; H. 17.22-23): the first four words are chiastically arranged (object / verb: verb / object), followed by litotes (*nihil . . . negabas*); the three independent clauses are paratactically arranged, with asyndeton. The father has spoiled his son and was therefore responsible for his expensive and dissolute life (cf. *filio me luxurioso iam et petulanti dedit* [H. 17.14-15] & the ironic *luxuria mea* [H. 17.21]), which was ultimately responsible for his death, and not therefore the fault of the *paedagogus*, or his personal example.

Declamation 18

Abdicatio and its variants, which can generally be translated as "repudiation," "disinheritance," or "disowning," is a common procedure in this collection (Calp. 14, 19, 31, 37, 48), as in the others (see Lanfranchi 254- 255, n. 3, for a full listing; for bibliography see ibid. 254, n. 2 & Bonner 101-103 nn.: see also in general Bornecque 65-66; Lanfranchi 254-267; Russell 31-32; Sussman n. 1 *ad MD* 9 [p. 251]). In these cases a father usually repudiates a son and banishes him from the house (Bonner 101 & nn. 8, 9). The son will object to the grounds for this (thus precipitating the declamatory case). This informal Roman procedure appears not to have been uncommon (V. Max. 5.8.3). As Bonner notes (101-102), *abdicatio* has no sanction in Roman law. It is more of a moral repudiation of the son, who remains under *patria potestas* and could be reinstated, presumably when his objectionable behavior ceased (Bonner 102 & n. 5). There are similarities to the legally sanctioned *exheredatio* with the exception that in the latter the challenge occurs after the father's death, and that it was a legal act, whereas *abdicatio* strictly was not. Nevertheless, many of the arguments used in both cases would be similar (Q. 7.4.11; cf. Lanfranchi 265; Bonner 102 & nn. 6, 7, 8), and therefore *abdicatio* cases would provide good practice. This particular case is quite unusual. First, it deals with a group of *abdicati*, not a single individual. These sons come armed to the senate house, demanding their reinstatement *en bloc* by a resolution of the house, and not, in accordance with declamatory convention, before a court (see Lanfranchi 261; cf. 258-260; Bonner 102). The nature of the sons' acts which caused their *abdicationes* is not explicitly stated, although plainly it is the conventional complaint of riotous and luxurious living, as is strongly implied in the words of one of the sons (H. 18.9: *aetate lapsi sumus; egestate correcti*). In such cases the declaimers would normally beg indulgence for youth, appeal for mercy, and cite their newly corrected *mores*, in a fashion similar to Cicero's efforts in *Cael.* and also Roman comedy; see *DMin* 260.2 & W. n. *ad loc.*, with much citation, for a somewhat similar situation to this; also n. *ad* H. 18.9. The presence of the sons under arms (*armati*) frightens the senators, who believe they are being intimidated (H. 18.15-16); the declaimer turns this around on the example of his own son's death by stating that the arms are intended for their own (presumably mass) suicide. This is not strictly a judicial speech, since it is not composed to be delivered before a court; for other non-judicial types see Calp. 3 (before a general's tribunal; i.e., Marius); cf. Calp. 19, 52 (before other deliberative bodies); Calp. 17, 23, 33, 42 (appeals to tribunes); Calp. 20, 38, 39, 50, 53 (before the senate); Calp. 47 (electoral speech, per-

haps in the forum); see also *DMin* 253; 254; 255; 261; and W. nn. *ad DMin* 253; 255; 255.1; cf. 261.

admitting them to their former status (*ut recipiantur*; H. 18.3-4): parallel in meaning to *revocari* (18.2); cf. *OLD* s.v. *revoco* 3 b, in virtually the same meaning; cf. *ius restitutionis* (H. 18.12) & *restituet* (H. 18.13).

. . . that you do not give free scope to your own personal anger (*ne indulgeatis irae domesticae*; H. 18.5): see H. (1972) 67, who also accepts, as I do, Schult.'s necessary correction of *ne* for *ut* (*codd.*). For the use of the dat. with this verb and its emotional context see *TLL* s.v. *indulgeo* 1251.19ff; *OLD* s.v. 3 a; cf. *MD* 10.10 (H. 209.9).

for just as it is the mark of a fortunate man . . . . (*nam, sicut in vita numquam errare felicis est, ita errorem quam primum emendare sapientis*; H. 18.6-7): an effective, balanced aphorism. Cf. *MD* 9.12: *peccavi, veniam peto; et errare hominis est et ignoscere patris*; also Lact. *Div. Inst.* 6.24 = Cic. *Ac.* 3.2.1. Note the repetition of *erravi* in Calp. 52 (H. 39.12-13).

the hesitation of men who may be responsible for the deaths of their sons (*cunctatio parricidarum*; H. 18.8): *parricida* here is used in the broad sense of the "murderer of a near relative"; see n. *ad* Calp. 12 (H. 12.12). If the senators continue to delay and do not grant the retraction of their *abdicationes*, the sons will commit suicide as the speaker's son has already done, and thus they will bear the responsibility for their sons' deaths (Schult; cf. *<minantur> enim suam mortem* [H. 18.16] & n. *ad loc.*). Note the chiastic arrangement of *parentum ... deliberatio*: *cunctatio parricidarum*, with terminal assonance & asyndeton.

we went wrong because of our immaturity . . . . (*aetate lapsi sumus; egestate correcti*; H. 18.9): I have accepted the restoration of *sumus* from BC by H. (1974) 59-60, in pref. to Schult.'s & L.'s emendation to *sunt*. As *vos exoramus* (H. 18.9) clearly shows, this is a quotation from one of the sons as a speaker (cf. ibid. 60), even though we lack an introductory statement to that effect; for sim. cf. e.g. Calp. 21 [H. 20.6]). I have therefore added a likely English one (bracketed) in the translation. One may compare in this situation the advice of the Master in *DMin* 260.2: *ego tamen existimo dandum esse advocatum: primum quod, etiamsi quid remissius ac liberalius fecit, aetate excusari potest, non consentiunt autem haec inter se ut idem * et tantum infirmitatis animi ut hac excusandus sit.* On the *locus de venia* for *abdicati* or sim.

see W. n. *ad loc.* (with much citation). Note the parallel structure, terminal assonance, and asyndeton. Poor men cannot indulge in *luxuria* since they cannot afford it; cf. n. *ad* Calp. 17 (H. 17.20-22); here, then, the sons are reformed to decent living by their poverty, and it has now become a part of their new nature cf. *tamquam alia natura*; H. 18.13-14).

I was the man you well knew, grim and harsh I was (*ego ille tristis et saevus*; H. 18.11): cf. Ter. *Ad.* 866: *ego ille agrestis, saevos, tristis, parcus, truculentus, tenax*; originally perhaps from Menander; cf. Ashmore, n. *ad loc.*, citing Meineke, *Frag. Com. Graec.* iv, p. 72.

I have wept . . . though quietly (*flevi . . . licet tacitus*; H. 18.11-12): cf. Calp. 16 (H. 16.9): *tacuit et flevit* & n. *ad loc.*

let your official approval restore our sons to us . . . (*restituet nobis filios auctoritas publica tamquam alia natura*; H. 18.13-14): I take the future *restituet* in its imperative sense, common in comedy (to which this decl. seems indebted for its theme of generational conflict, youths living dissolute lives, then reforming their ways, and not least of all, a stern father turned indulgent); e.g. Pl. *Most.* 515; also found in the Augustan poets; e.g., Hor. *Ars* 385; Ov. *Ars* 2.529; cf. G&L sec. 243. The change in the sons' characters (*tamquam alia natura*) is painfully admitted by the sons: *egestate correcti* (H. 18.9).

gentlemen of the senate (*P. C.*; H. 18.14): the regular abbreviation in Calp. for *patres conscripti*; cf. Calp. 20 (H. 19.8, 10); 38 (H. 32.2); 53 (H. 40.6).

may appear to be wiser and more prudent (*sapientior videatur et cautior*; H. 18.14): see H. (1972) 67: "The behaviour of the disowned young men is said to be more sensible than that of the fathers." H. (ibid.) here suggests *cautior* ("more prudent") instead of the awkward *certior* in the MSS, citing Cic. *Att.* 14.14.2: *qui se cautos ac sapientes putant* (note also the somewhat sim. context here); Tac. *Agr.* 27.2: *illi modo cauti ac sapientes.*

yes, <they threaten> death—but it's their own (*<minantur> enim suam mortem*; H. 18.16): so H., preferable in this troubled passage (see his *app.*) to *<fatetur>* (Weber 12; cf. Dess., L.). The sons therefore, in this view, will commit suicide as a result of the disgrace of *abdicatio*.

I will inter you in the tomb of our ancestors (*te . . . inferam maiorum sepulcris*: H. 18.17-18): cf. Suet. *Aug.* 101.3: *Iulias filiam neptemque . . . vetuit sepulcro suo inferri.*

I will inscribe my name added to yours on your epitaph (*elogio . . . nomen inscribam*; H. 18.18): if the senators pass the bill to recall and reinstate the *abdicati*, the father's name (which presumably in the world of decl. was denied a son after *abdicatio*) as a part of the son's—as was usual in Rome—will then revert to the son. This, then is a rather pathetic *revocatio post mortem*; cf. Lanfranchi 261 & nn. 3, 4; also 265. See Burm.'s remark (quoted in H.'s *app.* where the *tamen* has slipped out): *elogio, vel titulo sepulchrali inscribam meum quoque nomen, ut appareat me, licet abdicaverim te, patrem tamen tuum fuisse.*

Declamation 19

This is one of three cases of human sacrifice found in decl. (cf. Calp. 44; *DMin* 384); all are occasioned by an oracular response during a plague (cf. Calp. 42—a woman offers herself for execution after the commission of a *sacrilegium*). This reflects undoubtedly the absence of reliable evidence for such practices in the Greek world, since it was considered barbaric and unholy (Ps. Plato *Minos* 315). If we discount gladiatorial combats to mark funerals (on which see Ville 9-19, 229-230 n. 6, 461-462), similar practices are not attested in Rome, with the notable exception of the live burial of two pairs of Greeks and Gauls in the Forum Boarium during the darkest days of the Second Punic War (Liv. 22.57.6). On *abdicatio* see n. *ad* Calp. 18. This case would not seem to have taken place in a court, but perhaps before a board of priests, and is thus not strictly judicial. On offering one's self for death in place of another see n. *ad* Calp. 26.

I have embraced death . . . as unavoidable, now . . . as glorious (*amplexus sum mortem . . . necessariam, nunc . . . gloriosam*; H. 19.1-2): cf. Cic. *Div.* 1.51; also *Mil.* 16. It would appear that after the *abdicatio*, as in the previous decl. (Calp. 18 [H. 18.16] & n. *ad loc.*), the son here had resolved on suicide; having accepted this fate, he now has the opportunity to sacrifice his life in a more noble fashion. The figure of embracing death is unparalleled in decl.; but see Pl. *Bac.* 1152: *quamquam odiost mortem amplexari*; cf. Stat. *Silv.* 2.6.77. Note the close similarity of the Latin Vulgate 2*Mac*6.19: *at ille gloriosam mortem magis quam odibilem vitam amplectans*. For *mors* as *gloriosa* cf. Sen. *C.* 8.4 (H. 231.3); also Cic. *Phil.* 14.32; *Fin.* 2.97; *Div.* 1.51 & esp. Sen. *Ep.* 82.9- 12, 17, 21; Serv. *A.* 12.48; *G.* 4.218.

you forbid me to die . . . . (*mori prohibes et intervenis quominus spiritum quem fortunae meae debeo patriae profundam*; H. 19.2-3): the son's life is now his own to do with as he may and not subject to his father's will, since the ties between both were legally broken through *abdicatio*. Thus the legal question here broached and made plainer in the next sentence is the legal definition of father—after *abdicatio* are the legal ties now completely sundered? Note the alliteration of *p*'s. Cf. V. Max. 6.3.3: *honeste spiritum profundere in acie*; also Cic. *Phil.* 14.30: *qui pro patria vitam profuderunt.*

whenever . . . just so often (*quotiens . . . totiens*; H. 19.3-4): relatively infrequent in decl.; cf. Sen. *C.* 1.1.6; 4. pr. 7; 7.1.27; *S.* 6.21; *DMin* 248.4, 5.

Declamation 20

The law in full reads: *qui causas in senatu voluntariae mortis non adprobaverit, insepultus abiciatur* (*Min* 337 th.), but usually is stated in abbreviated form, as here with a form of *reddo*: *reddit in senatu causas mortis voluntariae*: cf. Calp. 38 th., 53 th.; *DMin* 335 th. See on this law Lanfranchi 489-490; also Simonds 87 (suicide in decl.); W. nn. *ad DMin* 335 (see p. 600 for additional citations); Dingel 122-123 (& esp. citations on the general subject; 123 n. 300); n. *ad* Calp. 8. A homicide could be refused burial in Greece and Rome, and, by extension, probably a suicide (Bonner 100-101). On status and the mode of delivery in such cases see Q. 7.4.39; 11.1.56. The declaimers here may have been using an older Roman law, "subjecting its text to careful interpretation, and perhaps endeavouring to bring it into line with the corresponding law of Greece" (Bonner 101). On male prostitution and the ignominy attached to it in Rome see e.g., Richlin 187-189, 224-226 (and, in Greece, Russell 35; Winkler 54-64). On twins in decl. see *DMin* 270 & W. n. *ad* 270.27; *MD* 8. Throughout this piece a shocked moral air prevails, and as in Calp. 3 (cf. n. *ad* H. 3.10), there is obvious reluctance to deal with the more sordid sexual details.

why must I, a modest man .... (*homini verecundo cur necesse est ....*; H. 19.8-9): cf. Calp. 32 (H. 29.4-5): *homini verecundo in eiusmodi crimine longe gravior est fama*; also *DMin* 265.14. Note in both the emphatic initial position of *homini verecundo* (cf. *verecundia* below; H. 19.11 & n. *ad loc.*)—if this is the beginning of a sentence where there is evidence of difficulties in the text; L. suspected a lacuna before *homini* (*app.*), thereby reading *cui* found in the MSS. Burm. however had suggested *cur*, agreed to by H. (1972) 67 & *app.* For this interpretation of a difficult sentence I am indebted to D.A. Russell, *per litt.*

you know us ... we are personally known (*nostis nos, P. C.; etenim pluribus noti sumus quam et aetas et verecundia postulat*; H. 19.10-11): the declaimer is playing on the concrete and sexual meanings of *nosco* and its family; cf. Cic. *Cael.* 31 (referring to the notorious Clodia): *... muliere non solum nobili verum etiam nota* (see also Austin n. *ad loc.*). The speaker especially is well known for his pure life, by contrast to his brother who is sexually "known" all over and has a bad reputation. In a similar vein, there is also a play on the *verecundia*, which here can mean "a sense of shame (consequent on, or inhibiting, dishonorable or disgraceful conduct)" (*OLD* s.v. 3) or "modesty" (*OLD* s.v. 4) in which latter flavor we find *verecundo* to refer to the speaker

just previously (H. 19.8). *etenim*: C's *enim* reproduced by L. cannot stand at the beginning of the clause; cf. Burm.'s text; Meister 236; explained fully in H. (1972) 67 (cf. *app.*).

my brother was lured away from me and corrupted.... (*raptus est mihi frater pessimis comitibus et perditis*; H. 19.11-12): I have tried to retain the force of the verb which can mean in this context both to remove from one's physical presence and to violate sexually. Note the allit. of the adjectives *pessimis* ... *perditis*, the poetic dat. of agent (unless Gronov.'s <*a*> *pessimis* is correct; cf. H. *app.*), and the profusion of hissing *s*'s.

well then, with Dissipation as the captain of his ship ... (*duce namque luxuria et subremigante seu potius velificante nequitia in illos impudicitiae scopulos et ipsa famae suae naufragia delatus*: H. 19.12-14): note the personification and also the extended metaphor of shipwreck for moral ruin. Here *subremigante* occurs in an unusal figurative use (cf. *OLD* s.v. *subremigo* 2) and also *velificante* (cf. *OLD* s.v. *velifico* b; but also 2, where the more extended meaning occurs, "to direct one's efforts [towards], set one's course [for]"). (The two words occur together in the more literal sense in Plin. *Nat.* 9.88.) Both are examples of striking usages, commented upon by Weber 21.

homosexual perversion (*impudicitiae*; H. 19.13): on the sense, see n. *ad* Calp. 3 (H. 3.20-21).

By God and all that is holy! Is one not allowed to die ... ? (*pro deum atque hominum fidem! qua in civitate prostitui licet, mori non licet*?; H. 19.14-15): cf. Calp. 34 (H. 30.1-2; also n. *ad loc.*) : *pro deum atque hominum fidem! in qua civitate raptor solutus est, in ea rapta vincitur*? Here understand *mori [voluntarie]*. Note the emphatic *conduplicatio* of *licet*, here probably appealing to pity cf. *Her.* 4.38).

I wouldn't bear to live if I had seen this happen even in my own sister's case (*vivere non sustinerem si hoc in mea vel sorore vidissem*; H. 19.17-18): i.e., if his sister was caught in an act of illicit sex (adultery), she could be killed, at least in the world of declamation (see n. *ad* Calp. 31); however, the *stupra* committed by his brother as a male homosexual prostitute could not be so punished; see Richlin 224. Cf. Calp. 3, where the declaimer defends the young soldier who killed his superior officer during an attempted homosexual rape; after citing the examples of Verginius and Lucretia, he states: *pudet me, imperator: feminae exemplis militem tueor* (H. 3.16-17). *vel* occurs commonly in

this sense of "even, at any rate"; see Calp. 21 (H. 20.6), 23 (H. 22.1), 29 (H. 27.10), 44 (H. 35.4, 5); cf. *OLD* s.v. 5, 6; Weber 23-24.

these men are shameless, dunning creditors . . . . (*improbi flagitatores, qui detrimenta pueritiae suae mutuo dedecore compensant*; H. 19.18-19): I have tried to maintain the financial metaphor. Cf. *mutuis libidinibus*; Petr. 81.6. The initial ellipsis of *sunt* is notable.

Declamation 21

Very similar are Sen. *C.* 10.2 & *DMin* 258 (see W. n. *ad loc.*). Rewards for heroes form a frequent topic in this collection; see Calp. 15 & n. For additional occurrences and further discussion see Lanfranchi 389-390; Bonner 88; W. (1984) 597 (entry under I, Prizes, 1 Heroes). The painting of a war hero's deed as a reward occurs only here in Roman decl. (see Lanfranchi 389 & n. 5); cf. Choricius *decl.* 11. For a statue in such a case see Sen. *C.* 10.2; as a reward for tyannicide see *DMin* 282. On contending for rewards see Bonner 88; n. *ad* Calp. 13. Implied in *pater a minori petit ut maiori cederet* (H. 19.22-23) is the law more explicitly stated in Calp. 22: *praemio cedere liceat* (H. 20.17); cf. Sen. *C.* 10.2 th., 5; *DMin* 258. In the case of two acting heroically, when, apparently, only one reward is possible, they may contend in a trial, an old motif dating to the contest between Odysseus and Ajax over the arms of Achilles; see Bonner 88. Contending in arms is fairly uncommon; in a court see Sen. *C.* 10.2; in battle *DMin* 258 & 271 (cf. 271.9). See W. (1984) 597 (who adds Spengel 2.181.9; Walz 8.321.7); cf. Lanfranchi 389 & n. 10. The existence of such a law is not supported by the evidence (Bonner 88; cf. Lanfranchi 390). This entire case is highly imaginary and emotional.

[two] brothers (*fratres*; H. 19.22): I have supplied "two" as is clear from the text of theme which is characteristically terse in Calp. (see n. *ad* Calp. 3). Note also the above mentioned omission of the text of the law allowing one to yield a reward to another.

their father requests . . . . (*pater a minori petit ut maiori cederet*; H. 19.22-23): *minore* MN & L.; Burm. & H. *minori*. Cf. Sen. *C.* 10.2 th.: *petit pater a filio, sibi cederet.*

I venture to say nothing . . . . (*nihil audeo filio dicere quam quod ab ipso nuper audivi: leges uti valeant*; H. 20.3-4): as H. (*app.*) suggests, the father is in effect apologizing for taking recourse to legal action. However there seems to be more than this here. Both sons wanted the reward; the younger wanted it badly enough to invoke the statute providing for a duel to settle the issue. It could well have been at the time (*nuper*) that the son had said in effect "let the laws prevail," i.e., let the issue be decided in accordance with this law; cf. *DMin* 308.9; for *lex* & *valere* in this sense cf. Cic. *S. Rosc.* 55; *Sest.* 86; *Leg.* 2.23; *Parad.* 4.27. The younger son is now apparently embarrassed over the situation and does not want his picture painted; but this is provided for in the law, and so now the father repeats the son's former statement. The point is that both in the matter of not yielding to an

older brother and in requesting his heroism not to be pictured, the younger son is applying not to the letter of the law, but dealing with requests. The father is holding for execution of the letter of the law. Schult. suggests that the father may have feared the murderous hands of his son (*an quia parricidiales illius metuit manus*?); he is uncomfortable with *audeo*, suggesting perhaps instead *habeo*. H. (*app.*) retains *audeo*, contending that the sent. means: *non audeo filium precibus tantum adire, sed cogor lege uti*. This would suggest that H. reads *uti* in the text as the pres. inf. of *utor*: "let the laws have the power to apply." This seems awkward; perhaps it is best taken as the archaic form of *ut* (cf. *DMin* 268.7; 270.7; 317.3; *MD* 13.1 [*utique*; H. 265.16]; 16.5 [H. 324.18]), here introducing a wish in an independent clause; cf. *OLD* s.v. *ut* 42 (or perhaps s.v. 43, introducing a request or instruction).

a lover and champion of his family and country (*amator et cultor suorum*; H. 20.4-5): see Ov. *Ars* 1.722 *qui fuerat cultor, factus amator erat*, the only other conjoining of the two nouns (PHI CD ROM 1991; cf. Ter. *Hau*. 389). The father seems to be saying that the elder son would not have acted as the younger did, and would have yielded to his father's request. Note the profusion of hard *qu* and doleful *m* sounds in the latter part of the sentence: . . . *et qui mori mallet quam quicquam mali facere*.

yield to your brother . . . . (*cede fratri, cede vel patri; victor eris, mihi crede, si cesseris*; H. 20.6): note the anaphora, asyndeton, the striking triple repetition of *cede*, the assonant *crede*, and terminal assonance of *-e*, *- atri*, and *- eris*.

I have learned that fratricide can be committed . . . . (*didici salvis legibus parricidium posse committi*; H. 20.7): once again the term *parricidium* in the broader sense of killing any near blood relative; see n. *ad* Calp. 12 (H. 12.12). Cf. *DMin* 258.6 in a somewhat sim. context: *iam video quare non cesseris: hoc tibi praemio maius videbatur, committi cum patre et parricidium facere iure . . . .* The abstract noun for the killing of a brother, *fratricidium*, is not found in classical Latin; the agent noun *fratricida* occurs only in Cic. *Dom*. 26; Nep. *Timol*. 1.6. Note allit. of *p*, spat out by the indignant father.

now the rest of the story ought to be painted . . . . (*cetera iam non sunt narranda, pingenda sunt*; H. 20.7-8): note the chiasmus of the last four words; also asyndeton. The father is saying that he ought to omit a formal narration of the events and let a painting speak for him, in this case not of the original heroic action, but "the rest of the story," i.e., a representation of the younger brother killing the elder, as the following

text makes clear. Lacking a full text, this is indeed probably what the father would have wanted in the painting—the entire story, and not just the original heroic battle. It is to this that the younger son objects, and explains his request not to have the painting made. This would appear to be a new excerpt (suggested by D.A. Russell, *per litt.*).

worse than the real blood (*peius quam sanguinem*; H. 20.9-10): so H. (1974) 60 for the awkward *per quod* (BC) and *quod per* (B2, MN; Burm., L.).

let this deed be represented not just in paint.... (*simuletur hoc factum non tantum colore, sed aere, si possit, et lapide, et quacumque nostrorum corporum materia vel ars aemula est*; H. 20.10-12): the sentence is troubled; see Gronov. & Burm; also Weber 12; H. (1974) 60. I prefer to read *quacumque* (MN; Burm., L.) instead of H.'s *quaecumque* (ibid.), and have it modify *materia* in the abl., thereby retaining the parallel of this phrase to the other artistic media cited previously (*colore, aere, lapide*). In this reading we must read (or physically transpose) the gen. *nostrorum corporum* closer to *aemula* to depend upon it (cf. *OLD* s.v. *aemulus* [1] 3) or take it as a noun (*OLD* s.v. *aemulus* [2]). For this word in an artistic context see esp. Apul. *Met.* 2.4: . . . *quas ars aemula naturae veritati similes explicuit*; also Var. *Men.* 436 (= Non. 492 M); Plin. *Nat.* 35.95; Q. 12.10.9; V. Max. 8.11.5; Serv. *A.* 6.14. The parenthetical *si possit* probably refers to the much greater cost of bronze statues and the related difficulty of rendering such a complex action in a statue grouping.

how can [the portrayal of] those events which have been done, be left undone? (*infecta quemadmodum possunt esse quae facta sunt?*; H. 20.12-13): i.e., they are such vivid and powerful images (as explained in the following sentence) that they require preservation for all time. Note here the etymological play on the contrasting participial adjs. *infecta* . . . *facta*, a fairly common device; e.g., Cato *Agr.* 2.1 *ubi cognovit, quo modo fundus cultus siet, opera quaeque facta infectaque sient*; also Pl. *Am.* 884 *ea quae sunt facta infecta ut reddat clamitat*; cf. *Truc.* 730; Verg. *A.* 4.190; 10.527-528; Livy 34.52.4; Stat. *Theb.* 3.430; Gel. 6.3.42. The initial position of *infecta* is emphatic, and until the rest of the sentence explains its meaning, could easily be misconstrued (no doubt, intentionally) as the p.p.p. of *inficio*, "dye, tint" or "stain with blood" (*OLD* s.v. 1, 2). Note the similarly emphatic position of *picta* at the beginning of the next sentence.

engraved (*incisa sunt*; H. 20.14): *incido* can also mean to cut open or make an incision into a living body or its veins (*OLD* s.v. [2] 1 b).

Thus the word's primary artistic meaning spills over, perhaps a little inartistically (zeugma?), to the final image of the younger son's hands, bloody from killing his brother. Note in the entire sentence the anaphora of *in*, asyndeton, and the hissing *s*'s of the climactic phrase *in ipsis denique tuis manibus*.

Declamation 22

On the law granting a reward for killing a tyrant see n. *ad* Calp. 1; cf. n. *ad* 13. On yielding a reward to another see n. *ad* Calp. 21. A rich man asks for the hand of the daughter of a poor man as a prize for heroism in Calp. 29 (see Quint. 7.1.24-25 for a discussion of *status* in a sim. case). This is the type of court proceeding known as *divinatio*, in which two or more parties appear to contest the right to act as accuser, since there was no public prosecutor in the Roman legal system; cf. Q. 3.10.3; see Kennedy 158, 284 for discussion of several instances of this procedure; also Calp. 49 & n. Here son and father dispute for the right to present the case in opposition to the stepmother's request to marry her stepson. The father throughout is hinting of collusion between stepson and stepmother (i.e., *praevaricatio*), frequently with irony and bitter sarcasm. For brief discussion see Tabacco (1985) 10 n. 24.

up to this point (*adhuc*; H. 20.21): i.e., because of conceding the award to his stepmother. If he wins the case then he will have to conduct the proceedings against her and be her opponent. Then (perhaps) he will be more of a *filius* to his father—the effect is ironic. Cf. H. *app. ad loc.*

stepmother (*novercae*; H. 20.23): he defers in the award to his stepmother rather than to his natural father, the more normally accepted act (cf. H. 21.4 *cum haberet in domo patrem cui nemo praeferret in tali honore*). Stepmothers do not get on well with stepsons in Calp. (cf. 4, 12, 35), as in the rest of decl.; see esp. Q. 2.10.5; 5.10.19; cf. Bonner 25, 80, 112, 115; W. n. 3 *ad* Sen. *C.* 4.6 (I, 454-455); Courtney n. *ad* Juv. 6.627; see also nn. *ad* Calp. 5; 12 (H. 12.15-16). Nevertheless, the reverse situation sometimes obtains; see Bonner 37, citing Sen. *C.* 6.7, where a father yields his new wife to his son, who is her lover; cf. W. n. 1 *ad loc.* (I, 520); also n. *ad* Calp. 48. For both good and bad relationships between stepmothers and stepsons see B. Rawson, "The Roman Family," in Rawson (1987) 36 & nn. 112, 113 (p. 55); Dixon 143-144.

favor (*beneficium*; H. 20.23): i.e., in his stepmother's case, the reward. The *beneficium* to be received from his father would be conducting the case against the stepmother.

I made my first mistake, I confess it . . . . (*ego primus in domo mea, fateor, erravi, qui uxorem duxi senex*; H. 20.24-21.1): cf. Calp. 52 (H. 39.12-13) *erravi, iudices, fateor, erravi, qui semper credidi ....*

the woman's incestuous eyes (*oculos mulieris incestos*; H. 21.2): on the eyes as agents of passion see n. *ad* Calp. 16 (H. 17.2); also n. *ad* Calp. 43 (H. 34.17).

didn't she sound out her stepson ahead of time? (*non privignum ante temptavit?*; H. 21.5): here the suggestion of collusion is much less veiled. See also, in a romantic situation, Liv. 27.15.11: *primo occulte temptando animum, dein satis explorata levitate blanditiis muliebribus perpulit eum ad proditionem . . . .*

which of us seems to you . . . ? (*uter [vos] vobis actor utilior vide[re]tur*; H. 21.6-7): so Schult. & H. (1974) 61 (& *app.*).

you in that case (*tu ergo*; H. 21.11): the strong initial *tu* contrasts with the son's previously quoted initial *ego*. The son has proclaimed emphatically that he has yielded the reward to his stepmother; for this reason he cannot make the case against her in court by asking back what he has given her and by necessarily casting aspersions on one whom he has so recently honored (*paulo ante laudaveris*; H. 21.12-13).

you have to be on your guard . . . . (*cavendum tibi est ne, si victus (ut sunt iudiciorum incerta) discesseris, dicariŝ iudicio quoque sic cessisse quasi praemio*; H. 21.13-15): H. has *dicesseris*, an obvious typographical error; cf. H. (1974) 61 where he has it right; also L. Note the play on *discesseris, cessisse*. W. n. *ad DMin* 371.5 compares *at enim dubia est iudicii fortuna*; cf. *DMin* 375.3: *verebar fortunam iudiciorum et exempla.*

those who hear nothing, suspect everything (*omnia suspicantur qui nihil audiunt*; H. 21.15-16): H.'s *<l>audant* (cf. [1972] 61) appears to me unnecessary, because the original *audiunt* (*codd.*) clearly makes sense. Likewise, there seems no compelling reason to accept Schult.'s suggestion to supply an *etiam* before *qui*, or perhaps to read *qui = quamvis* (& thus *audiant*). The vast majority of the people would not have been able to witness the legal proceedings; thus, the declaimer is ironically saying in effect: "we of course know that if you win the *divinatio* and present the case against your stepmother in court, you may lose, since anything may happen in a trial, even with a case as strong as this. In that eventuality, the people not present (i.e., *qui nihil audiunt*) may think that you intentionally lost the case (something we know you would of course never do)." One must always be on guard in reading these short, out of context remarks for the possibility of irony, esp. in this case, which is filled with it.

are you possibly producing the grounds for a quarrel in a love affair? (*affers in amore vel iurgium?*; H. 21.16): the situation can be fairly easily reconstructed: by granting the reward to the stepmother, the stepson is offering her a source of comfort—and promise—the prospect of eventual marriage (if not, just a lover's gift). But he must win the *divinatio* first, and then intentionally lose the court case so that she may retain the reward. But in presenting the case, however collusively, he will have to say things about her which she will resent. H. (1974) 61 rightly (along with L.) rejects Schult.'s overly ambitious attempt to rework the text (*affers pro amore volens iurgium*, or, *qui inferre in amore velis iurgium*), adding that perhaps a question mark is in order here, although he does not place it in his text or mention it in the *app.* He, however, suggests by way of explaining the text Ter. *An.* 555: *amantium irae amoris integratiost.*

Declamation 23

On laws (1) & (3) see n. *ad* Calp. 17. Law (2), permitting sons to punish (presumably by death) mothers caught in adultery (cf. Sen. *C.* 1.4 & W. n. 4 *ad loc.* [I, 105]) is extended to encompass punishment of sisters in Calp. 31. (On husbands inflicting this punishment see n. *ad* Calp. 48; cf. 49.) The law has a strong Greek basis (in law as well as legend; e.g., Orestes and Clytemnestra), and may in certain cases have been valid in Republican Rome; see Bonner 121-122, with much citation; Russell 33-34. A declamation of this type would be attractive to argue since it provides ample opportunities to expand on such topics as filial duty to a father (since the father could delegate the power to his son to punish his mother) and the definition of matricide. The crux of the case is the son's citizenship status. Apparently the father-in-law (or perhaps an agent of his) has claimed that the son was not a citizen, on the basis that his father was not (e.g., H. 22.1-2, 4). Since documentary evidence cannot be used in a declamation, the arguments here in support of citizenship status refer to the uncontested acceptance by the father-in-law of the legality of the marriage and its issue (H. 22.7-9). The son's citizenship was never in question until after the woman committed adultery and was punished by death (H. 22.15-16). Thus the father-in-law is depicted as seeking revenge for the death of his daughter, using the contested citizenship to strip the son of his legal defense; i.e., if the son was not a citizen, he was not legally a son and therefore had no legal basis on which to kill his mother for adultery under the law.

who was apparently his mother (*quae mater videbatur*; H. 21.20-21): cf. *qui videbatur de civibus natus* (H. 21.19-20) & *qui pater videbatur* (H. 21.24-25). The excerptor uses this phrasing to show without prejudicing either side what is actually the crux of the case: the status of the son's citizenship. The biological facts of his parentage are treated as unquestioned (H. 22.7-9). It is his legal status, and by strong implication, his father's, that is open (the wife's status is uncontested). When the mother says "*non es meus*" (H. 21.11; cf. H. 22.20: "*meus non est*"), she means that he is not her legal son (since he is not a citizen), not that he is not her biological son. See n. *ad* Calp. 23.

if, in spite of (*si tamen*; H. 22.1): or, "if indeed," "if this is the case"; cf. Calp. 39 (H. 32.14) *si tamen hoc nomen* . . . ; Ov. *Tr.* 3.14.24 (suggested by D.A. Russell, *per litt.*); also Weber 24; *OLD* s.v. *si* 8 b ("if really").

I myself married this man's daughter in accordance with our laws . . . . (*huius ego legibus filiam duxi eamque praegnantem simul vidimus et uteri decem menses ambo numeravimus et natum ex ea pignus accepimus*; H. 22.7-9): two important points are made here, which apparently must be conceded by the opposition: (1) the father of the boy had exercised uncontested his citizen's right of marriage to another citizen, with the approval of the father-in-law, and (2) both the husband and his wife's father recognized the legitimacy of the son who was born in the due course of the approximate time span for pregnancy, on which to legitimize children, see Lanfranchi 226-227 (esp. 227 n.8); the number is reckoned inclusively, as is the the Roman practice; cf. *DMin* 338.29 & W. n. *ad loc.*, with additional citation. Note the use of *pignus*, "fruit of our wedlock" (H. 22.9)—a strong term; *OLD* s.v. 4: "applied to children as the guarantee of the reality of a marriage." Cf. its slightly different use in Calp. 53 (H. 40.7) & n. *ad loc.* The polysyndeton here effectively provides the impression of a large supply of evidence.

but when an unavoidable trip abroad was going to call me away . . . . (*sed cum me necessitas peregrinationis abduceret, commendavi avo filium meum. adulescentulo praecepi in domo <patris> partibus fungeretur, et, ut plus illi necessitatis imponerem, sententiam vestrae legis ingessi. denuntiavi postremo futurum ipsius crimen, si non patri paruisset et legi*; H. 22.9-14): the interpretation of this passage hinges on two key words: *commendavi* and, more importantly, *<patris>*. The latter conjecture, accepted by L. (21.17 & *app.*) & H., was originally made by Gronov., who suggested also the possibility of *<meis>*, since, in any case, the unmodified *partibus* obviously requires amplification. I have interpreted the passage as follows: in the first sentence the departing father has entrusted his son to his grandfather's overall moral and legal protection, since, as an *adulescentulus* and still subject to *patria potestas* he was not *sui iuris*, and his legal capacity was quite circumscribed; cf. Plescia 150-151. It is this sacred trust which the father-in-law / grandfather has violated, first by possibly prosecuting his grandson for passing himself off as a citizen (assumed from the argument, as in Calp. 17; or perhaps an agent or agents were responsible; cf. *adversarii* [H. 22.1]), and worse (and more incontestable) buying him as a slave, then proposing to have him executed. In the second sentence, whether we take *<patris>* or *<meis>* (cf. *DMin* 257.13) qualifying *partibus*, the son has been formally and legally delegated to act within the household in the role of *pater familias*, with apparent full rights of *patria potestas*. He thus has the right and duty to punish adultery; cf. Bonner 121 (where he quotes *Cod. Iust.* 9.9.4), 122. To

underscore his duties in this capacity, the father reads off to him the appropriate statute (*sententiam vestrae legis*; H. 22.12), presumably from the Twelve Tables, and further adds, to emphasize his responsibilities under this delegation of duties, that there would be a penalty for disobeying (*futurum ipsius crimen*; H. 22.13-14), which, under *patria potestas*, could even include death. Alternatively, one could conceivably force the interpretation of *commendavi* to mean that the father physically placed the son (and presumably, the mother) in the grandfather's home and *patria potestas*. In that case one would have to accept <*patris*> and understand it with *domo*, in the sense of, "in the house of your (new) father," but this would leave *partibus* unmodified and unintelligible, and undermine the father's entire case.

my son began to be a foreigner after his own mother committed adultery (*peregrinus esse filius meus post adulterium matris suae coepit*; H. 22. 15-16): the declaimer emphasizes that the question of citizenship was raised at a time when it became a suspiciously convenient way for the grandfather / father-in-law to take vengeance upon his grandson; cf. Calp. 17 (H. 17.12-13): *audio me subito peregrinum, quod nec pater ipse nec mater aliquando prodiderat, nec denique umquam inimicus dives obiecerat.*

"he killed my daughter," my opponent tells us (*"occidit," inquit, "filiam meam"*; H. 22.16-17): for a sim. real or imagined quoted opposition statement followed by a reply cf. Calp. 17 (H. 17.19-20): *"occisus est," inquit, "filius meus." si iniuria* . . . .

tribunes, it is a serious and difficult matter . . . . (*grave est, tribuni, in servitute defendere quod in libertate commiseris*; H. 22.17-18): i.e., as a slave under the control of a master who wanted to take revenge on him (for killing his daughter), something he did while still free, the young man would have absolutely no recourse under the law or ability to defend himself; cf. Lanfranchi 183-188. For *grave est* followed by the inf. see Calp. 35 (H. 30.16); cf. Sen. *C.* 1.1.12; 2.1.20; *Exc.* 2.1 (H. 125.19); *DMin* 337.16; *MD* 6.1, 21, 23 (without the inf. Calp. 4 [H. 5.14]; Sen. *C.* 2.3.7; *DMin* 337.9).

Declamation 24

The *lex indemnatorum* refers to a father's exercise of the right of life and death over his children under the terms of *patria potestas*; see on this Lanfranchi 251, nn. 5, 6; cf. 251-254; also Plescia 145, 147. See also Sen. *C.* 7.1 & W. n. 2 *ad loc.* (II, 14-15), who cites on a father's powers of domestic jurisdiction B. Nicholas, *An Introduction to Roman Law* (Oxford 1962) 67. The law also appears in Calp. 44, 45 (where it is more fully stated: *indemnatos liberos liceat occidere*; H. 35.10), 46, & 53; but the most notable examples (though not specifically mentioning the law itself) occur in *MD* 18 & 19, where a father gruesomely tortures and kills a son suspected of incest with his mother. A real life example (of Fabius Eburnus) is mentioned in *MD* 3.17; cf. V. Max. 6.1.5. Notable also is the case of T. Manlius Torquatus, who had his son executed for disobedience in 340 BC, cited in Sen. *C.* 10.3.8; cf. 9.2.19; cf. V. Max. 2.7.6. For additional examples and further citation, see W. nn. *ad DMin* 349.8. Normal procedure would include consultation with a council of family members and close friends; V. Max. 5.8.2; cf. Livy 2.41.10 (further citation given in W. nn. *ad DMin* 280.14; 349.8). In Calp. 24 the father is unable to execute his son by himself and therefore hands him over to a professional (*carnifici*; H. 22.23; cf. 23.10). The son does not dispute the penalty, just (ostensibly) the means of delivery. But he obviously hopes that if the professional executioner is denied, his father will not be able to administer his own sentence. Note the extreme pathos (H. 23.19-21) directed at the father's right hand as the agent of execution. On deputizing a *vicarius* in a different context cf. Calp. 26 th. & n.

who had been met with ill-success (*qui fuerat offensus*; H. 23.1): the father had apparently undertaken to perform the execution of the son by himself, but was unable to carry it through. The wording implies that he had been checked in the actual process itself. The usage is not cited in *TLL* s.v. *offendo*, although a pass. impers. use seems close ("fere i.q. male evenit"; 491.77ff); cf. Cic. *Fam.* 1.7.5: *si aliquid esset offensum*; *OLD* s.v. 2 b, "stumble, trip" or 4, "to cause pain or discomfort to, trouble, upset."

obedient (*morigerum*; H. 23.3): ordinarily and frequently a comic term; e.g. in a sim. context Pl. *Am.* 1004: *meo me aequomst morigerum patri*; cf. *Capt.* 966.

I desire no other evidence (*nolo aliud indicium*; H. 23.3-4): Meister 236 suggests *<afferri>* after *indicium*, which, while attractive, is unnecessary for the meaning; cf. H. (1974) 62.

in order not to offend my father, I did not even oppose the death penalty (*ne patrem laedere<m>, nec mortem recusavi[t]*; H. 23.4- 5): so Schult.; & it fits in with the following *non quaero* (H. 23.6); cf. H. (1974) 62. This notably makes more sense of the passage than Gronov.'s *laederet . . . recusavit* (followed by L.). In certain cases a son would be reluctant to speak in his own person against a father in real life & in decl. (Bonner 52-53), but certainly not here, where the pathetic and highly emotional portrayal of the son would not be out of place, and in fact would be extremely attractive for declaimers to portray *in propria persona*, esp. as is more obvious at the end of this decl. (H. 23.17-22; cf. 23.8 *meo*).

death is premature (*mors acerba*; H. 23.6): in this sense (*TLL* s.v. *acerbus* 368.17ff) cf. in decl. Sen. *S.* 6.22; *MD* 10.8, 12; also Curt. 9.6.19; cf. *acerba funera*: Tac. *Ann.* 13.17.4 (note the previous *praematura . . . mors* in 13.17.3) & Furneaux n. *ad loc.*, citing the use of the metaphor in Verg. (*A.* 6.429; 11.28) for those who died in childhood or early manhood; cf. Sen. *Marc.* 9.2; 17.8; *De Ira* 3.25.1; *Ep.* 122.10; also Plin. *Ep.* 5.5; cf. 4.21.1; 5.16.6.

yes, for his part (*immo et ipse*; H. 23.8): cf. Calp. 30 (H. 28.5): *dixit immo ipse.*

does not allow an executioner to be called in against a person who did not face a judge (*ut adhibeatur adversum eum carnifex, in quem non fuit iudex*; H. 23.10-11): i.e., the son contends one convicted in a proceeding under *patria potestas* must be executed by the father only. But in at least some cases in decl. executions are delegated by fathers; e.g., Sen. *C.* 7.1 (a son delegated to execute his brother for attempted parricide); cf. Lanfranchi 253-254. So also in cases of adultery (though somewhat different, the principle is nearly the same); cf. Bonner 121-122; also n. *ad* Calp. 23; examples in W.'s nn. there cited.

let the man who originated my life terminate it (*faciat vitae finem qui originem fecit*; H. 23.11): chiasmus, terminal assonance of *-em*, clever play of the forms of *facio* which frame this *sententia.*

. . . or tampered with a family's sanctity of inheritance through grafted on stock (*. . . nec sacra gentilicia insitiva stirpe corrupit*; H. 23.16-17): i.e., the purposeful introduction of a spurious heir; cf. Sen. *C.* 2.1.21: *adiecit et periculosam sibi futuram adoptionem in domo suos dominos desiderante, tota familia expellere insitivum heredem cupiente*; note W.'s transl.: " . . . the household would be united in its desire to get rid of the heir that had been foisted on it." I have, how-

ever, tried to retain the original flavor by repeating the agricultural metaphor. On *insitivus* in sim. contexts see Phaed. 3.3.10; also Cic. *Sest.* 101; [Sen.] *Oct.* 249; cf. *TLL* s.v. 1927.57ff. Gronov. originally suggested *insitiva* for the MSS *insertiva*, undoubtedly to retain the agricultural metaphor (cf. *TLL* s.v. *insitivus* 1927.70ff). *Insertivus* would appear only here, if it is genuine (*TLL* s.v. *insertivus* 1881.7ff). The *OLD* considers it to mean "intrusive," from *insero* (2), "insert, introduce." However, *OLD insero* (1) s.v. 2 does have the meaning "to graft on." See Weber 21; the rhetor here could possibly have coined the word to suit the occasion. But one would have to ask why, when there was a perfectly good word already existing, and well suited to the context. For *gentilicius* referring to inheritance cf. Suet. *Jul.* 1.2. See also generally on this situation Juv. 6.602 & Courtney n. *ad loc.*

life is taken from me, but my father's hand is owed to me (*vita mihi tollitur, sed manus paterna debet<ur>*; H. 23.17): so Burm., followed by H. (1974) 62. Gronov. suggested . . . *tolli, sed manu paterna debet*; approved by Meister 236, in place of L.'s *tollitur, sed manus paterna debet.* However, Burm.'s emendation as H. (ibid.) states is not only palaeographically more sound but also *debetur* is meant to be antithetical to *tollitur*: further, "One may deprive him of his life, but not of his father's hand." H. (*app.*) compares Calp. 25 (H. 24.11-12: *ergo raptori si poena dimittitur, rapta[e] debetur.* The *manus* refers to his father's hand as the instrument of his execution; cf. *dexteram manum* (H. 23.19).

father, you cannot both propose the same law's execution and deny me its consolation (*non potes, pater, legis eiusdem et inrogare supplicium et denegare solacium*; H. 23.17-19): note the initial allit. of *p*, the parallel and antithetical *et* . . . *et* construction, the dual terminations of *-gare*, and the assonant, antithetical *supplicium* . . . *solacium.* The latter term refers to death at his own father's hands rather than through the agency of a professional executioner.

I will soothe your right hand that is owed to me (*placabo dexteram meam*; H. 23.19): so *codd.*, L., H.; Schult. suggests *tuam*, adding by way of explanation: ". . . quae, spero, mihi incidere cervices vellet"; i.e., the father's hand is owed to the son as the agent of his death and is the proper means of execution in this case (for *meus* in this sense of appointed or proper for someone see *OLD* s.v. 5). Note how the declaimer goes on to apostrophize this same hand, referring to it as his own in a different, but very emotional sense: *cedo tantisper exosculer. o manus olim mea, quae me parvulum saepe gestasti, quam saepe lacrimis puer lavi!* (H. 23.19-21). That the father's hand is an object

of address, and is owed the son is obvious; cf. *manu patris* (H. 23.1); *manus paterna debet<ur>* (H. 23.17); also Jones 90. The statement *dexteram meam* makes a very effective and even striking contrast in both sense and depth of pathos with the *manus olim mea* directly following (H. 23.20). Jones 90 now takes up the cause of Schult.'s *dexteram tuam.* He agrees that the hand must be the father's but objects to the obtuseness of *meam*: ". . . the use of *meam* makes an already paradoxical saying so dense as to be virtually incomprehensible." He suggests that the corruption to *meam* might have arisen by anticipation from the succeeding *olim mea.* Nevertheless, I do not see the necessity of changing the striking *meam* to *tuam* here; as it stands it is exactly the sort of jarring and jangling utterance so favored by the declaimers.

Declamation 25

On the laws: (1) This is the only occurrence of a law providing two rewards for a war hero (cf. Lanfranchi 389 & n. 3); more commonly he receives but one: Calp. 26, 27, 36; cf. 21, 28, 29, 32; also Lanfranchi 389-390; Bonner 88-89; see in general n. *ad* Calp. 15. (2) On the *lex raptarum* see n. *ad* Calp. 16. (3) The law regarding the postponement of a rapist's punishment occurs only here in Calp. In its full form it reads: *raptor, nisi et suum et raptae patrem intra dies triginta exoraverit, pereat* (Sen. *C.* 2.3; cf. Q. 9.2.90; *DMin* 349). The Calp. 25 version (*poena raptoris in diem tricesimum differatur*) is greatly abbreviated and simplified, omitting the provisions for obtaining pardon from the fathers of the rapist and the raped girl. See on this W. n. 1 *ad* Sen. *C.* 2.3 (I, 266); also *DMin* 349 th.; cf. 249 (& W. n. *ad loc. moras* 249.9), 277 th., 313 th. Bonner 91 finds insufficient evidence to classify the latter law as genuine, although the postponement of punishment for a period of thirty days has a basis in Roman law (ibid. & n. 5; cf. Lanfranchi 462-466); the practice of deferring punishment during a festival has no basis in Roman legal practice; cf. Sen. *C.* 5.4 & W. n. 3 *ad loc.* (I, 480-481). The brother's case rests on either of two premises: (1) this was more than just a casual sexual assault—he loved the girl and looked forward to her exercising the option of marriage (e.g., H. 24.5-6, 9-10); or, less likely, (2) he was so penitent that he wished to die for the offense (perhaps H. 24.7-8 can be squeezed into this interpretation). In the final sentence (H. 24.10-13) the declaimer ingeniously twists the letter of the law to suit the situation, while cleverly evading the issue here of conflicting statutes (rape vs. reward). The portrayal here would be one of the earnest, impractical, love-stricken *adulescens* so common in comedy. The MSS give us *pro rapta* as the attribution of the speech; it must in reality be *pro raptore* (Pith.; D.A. Russell, *per litt.*).

good news (*bonum nuntium*; H. 24.5): i.e., that she has relented in her decision for his death and now desires to marry him. Note the contrast of the subsequent *nuntiatur* (H. 24.6); he is awaiting the news from the girl, and then the actual news is brought that his brother has returned as a war hero, with the consequent expectation that the reward to be granted him will solve his own two dilemmas simultaneously: *veniam & nuptias* (H. 24.7).

I supposed that he had asked . . . . (*petitam mihi et veniam putavi pariter et nuptias*; H. 24.6-7): note the explosive allit. of *p* & repetition of *t*. Burm. conjectures *paratam* ("obtained") for *petitam*, a common scribal error (e.g., Ov. *Med.* 21; Luc. 1.281). If so it would couple

nicely with *pariter*; but in any event it would affect the meaning very little. Gronov. suggests that *impetratam* (or something similar) may have dropped out before *veniam*: *petitam mihi et impetratam veniam.* Both scholars, usually very sensitive to irregularities in this text, are uneasy about the sentence.

God forbid.... (*nec dii sinant ut, converso iure, pro raptore rapta teneatur*; H. 24.7-8): Gronov. would change the *nec* to *ne*; however (cf. Burm.) the former is perfectly acceptable in Silver Latin; cf. e.g. Petr. 103.1; 112.7; 126.9. On *converso iure* cf. Cic. *Clu.* 199: *iura hominum convertit omnia.* The verb *teneatur* in this context would normally be associated with the genitive of the charge; cf. Sen. *C.* 10.4.11; *DMin* 350.2. The war hero would have asked as in Calp. 32 for *abolitio iudicii* as his reward. Note the emphatic juxtaposition of *raptore* & *rapta*; he focuses on his guilt in order to press his wish to save the girl and allow her to decide (he hopes) to marry him.

to achieve praise and glory sometimes it is better.... (*interdum praestat ad gloriam non certare quam vincere*; H. 24.8-9): cryptic, because of its conciseness and lack of context, the key being *gloriam*, which here seems to require both the meanings of "praise" and "glory." Perhaps the declaimer means something to this effect: "as regards praise and glory, yours in becoming a war hero and also coming to my rescue, it would ultimately have been better if you had not fought and won a victory, since you are abusing your reward in asking for the death of this innocent girl, and, perhaps, standing in the way of my eventual marriage to her." (Note that he does expect an eventual favorable decision from her: *bonum nuntium spero* [H. 24.5].) The use of the prep. phrase *ad gloriam* occurs over a score of times in Cicero, often with *pertinere* (rather than *praestare*, which occurs only here in Latin); cf. *Sest.* 70; *Off.* 2.36; *ad Brut.* 20.2; cf. also in decl. Sen. *C.* 9.1.10; 10.2.12; *DMin* 331.22.

unless I myself make clear by my actual deeds that I loved her. . . . (*ego nisi rebus ipsis ostendo quod amavi, confiteor iniuriam me fecisse quod rapui*; H. 24. 9-10): probably referring to his taking the woman's side in the case against his brother, although it could also have to do with patiently awaiting her decision, or it may have been a rape which was intended to have the desired result of forcing the marriage, but which did not work out as expected. Here again we miss the context. For sim. wording cf. Cic. *Caec.* 10: *habuit in matrimonio Caesenniam . . . probatissimam feminam, sicut et vivus multis ipse rebus ostendit et in morte sua testamento declaravit.* Note the parallel position and structure of the *quod* clauses, with their contrasting con-

tent. For *iniuria* in its more narrow conception of a sexual outrage cf. *OLD* s.v. 4 c, esp. Pl. *Aul.* 794: *ego me iniuriam fecisse filiae fateor tuae.*

the law reads (*lex dicit*; H. 24.10): so H., following only N; the rest of the MSS, Burm., & L. read *dixit.* However, this would be rare; cf. H. *app.*; also for *lex dicit* see Sen. *C.* 1.2.15; 1.5.7; *DMin* 254.14; 263.7; 265.10; 278.7; 311.3; 317.9; *MD* 6.12 (cf. 3.8). The only occurrence of *lex dixit* (or sim.) is *DMin* 314.8.

. . . the raped woman is his due (*ergo raptori si poena dimittitur, rapta[e] debetur*; H. 24.11-12): Gronov., L., H.; note the contrasts with the preceding *raptori* & *dimittitur*, allit., terminal rhyme.

Declamation 26

On the first law, regarding rewards for war heroes, see n. *ad* Calp. 15; here it is stated in its abbreviated form: *viro forti praemium* (H. 23.24); cf. the themes of Calp. 27, 36 (also 28, 29, 32) for the more regular *vir fortis optet quod volet* (on which see Bonner 88). The second law, *vicarium poenae liceat offerre*, appears to be a fiction, but the notion of offering one's self as a sacrifice appears in Calp. 19 & 44 (cf. 41), and more specifically as a substitute in a non-legal context as in Sen. *C.* 1.4.3; 9.1 th.; 9.4; cf. 8.1; *DMin* 257.11 (& W. n. *ad loc.*); 342 th.; also very frequent in the *MD* (with forms of *vicarius*): *MD* 6 th. (H. 110.16), 4 (H. 114.1, 22), 5 (H. 115.19), 6 (H. 116.12, 23), 19 (H. 130.11), 22 (H. 134.12-13), 24 (H. 135.19); *MD* 8.15 (H. 166.3); *MD* 9.8 (H. 182.7, 16), 9 (H. 183.4), 22 (H. 197.7); *MD* 12.7 (H. 238.1); *MD* 16.7 (H. 326.11); *MD* 19.4 (H. 375.25). (3) A more general parallel for the third law, granting a priest of Mars the right to free a condemned man (*sacerdos Martis damnatum liberet*), occurs (more inclusively) in *DMin* 284 th.: *sacerdos unius supplicio liberandi habeat potestatem.* There is some basis for this principle in Roman religious practices relating to the privileges accorded the Vestal Virgins and the *flamen Dialis*; see Lanfranchi 388 & nn. 6, 7, 8, 9; cf. 389 & n. 4; 413 & n. 2. See also the very complex and convoluted *DMin* 304 for a more general application: *sacerdos tria praemia accipiat.* Unstated here is the law providing for the execution of deserters; on which see n. *ad* Calp. 15.

special privilege (*privilegio*; H. 24.16): on the general use of this term see n. *ad* Calp. 15 (H. 16.5).

to lose [all] my sons would have been easier (*facilius fuerat amittere filios*; H. 24.18): an incomplete conditional sentence with the protasis suppressed (e.g., "if I had been compelled to accept the execution of all three sons . . . ."; cf. G&L sec. 599; on the use of the pluperfect indicative cf. G&L 597 R. 2). Note the allit. of *f.* I have supplied "all" as necessary for the sense in English. The priest's point is that he is unable to tolerate the selection of just two sons to live, and thus offers himself as the substitute to be executed in place of the third son (cf. H. 25.19-20); otherwise, as he states here, it would have been easier to lose all his sons. For fathers choosing among sons see *MD* 5 (a choice between ransoming a healthy, frugal son or a sickly, wastrel one, both captured by pirates) & *MD* 8 (choosing between two twins which one should be subjected to vivisection in order to save the other's life); cf. *MD* 9 in which a young man offers himself as a substitute in a gladiatorial combat for his friend, who had been captured by pirates and then sold to the owner of a troop of gladiators.

amid the actual holy places and the altars of the gods (*in ipsis sacris deum et altaribus*: H. 24.18-19): cf. below *inter aras et altaria* (H. 25.15) & n. *ad loc.*

influenced by these considerations (*ea propter*; H. 24.19): i.e., their religious upbringing as sons of a priest, to emphasize which we have an unusual case of inverted order (anastrophe; remarked upon by Weber 21).

have I not the right to intervene against the loss of my children, even with my own blood? (*resisto orbitati non iure vel sanguine?*; H. 24.22): thus the MSS, supported by H. (1974) 62; cf. *app.* He sees no reason to accept the emendations proposed by Schult. (*et iure et sanguine*), Obrecht (*non iure, sed sanguine*; cf. Meister 236; D.A. Russell, *per litt.*), Weber 13 & apparently Dessauer: *non iure vel <praemio, sed> sanguine*, the latter of which is supported by L. H. (1974) 62 believes that the emendations are poor stylistically and do not quite meet the facts of the case. The failure to place *non iure* at the beginning of the sentence can be explained on the grounds of prose rhythm and the necessity to keep the two words together. He translates: "Have I not the right to fight against *orbitas* even with my own blood?" This seems on the mark; in his text, however, he changes *non* to *suo* (his *app.* cites Calp. 3 [H. 3.11]: *pudicitia, suam legem habet*) and punctuates it as a declarative sentence: "I resist the loss of my children legitimately or by my own blood."

and yet I do not find anyone who can [better] act as as substitute victim, if not I for my son (*nec invenio quis possit vicarius esse nisi filii*; H. 24.23-25.1): another example of brief, cryptic expression which has caused problems in interpretation. I have supplied "better" as needed for the sense in English. My reading follows H.'s edition here, although previously (H. [1974] 63) he read *quis* = *quibus* (cf. *app.*), and suggested *filiis* for *filius* (BC), thus: "I do not find any for whom (one) would be able to be a substitute, unless for (one's) sons." But if we take the simpler reading of *quis* as a nom. sing., and accept Gronov.'s *filii* for the incomprehensible *filius* (an easy mistake, following *vicarius*), we have the sense, "and yet I do not find who can be a substitute, unless (I, as a father, may be a substitute) for my son." The gen. (and not the dat.) is regular with *vicarius*; cf. *OLD* s.v. 2 a; also Sen. *C.* 1.4.3: *processit in bellum hic unus omnium adulescentis filii vicarius*; *MD* 6.22 (H. 134.12- 13): *vilis senis vicarius*; cf. Sen. *C.* 9.1.4; *MD* 9.8 (H. 182.16). The "I" is easily carried over in sense from *invenio*, with the easy ellipsis from the sense after *nisi* as indicated. The father is

probably replying to the argument that he ought to enjoy his life now as a respected priest and honored war hero, and that the loss of just one of three sons should not cause him to offer his own life for his third son. The father's response here is that nobody is better suited to make such a sacrifice, and, as the next sentence explains, this, he thinks, was the law's original intent. Usually a son would offer himself as a substitute for his father in peril; see n. *ad* Calp. 26; cf. Sen. *C.* 9.1 th.

the particular man who first framed this law (*ille qui primus hanc condidit legem*; H. 25.1-2): cf. Calp. 50 (H. 38.8) *legumlator* & n. *ad loc.*

our religious scruples are violated more by a priest polluted with murder than by a dead priest (*magis religio polluitur funestato quam mortuo sacerdote*; H. 25.5-6): i.e., a priest who allows his son to die when he is capable of saving him is, in effect, guilty of murder (in such a case, the equivalent of *parricidium* as the priest sees it), an act that thereby renders him *funestatus*. This perf. pass. partic. is attested otherwise only in Serv. *A.* 6.8, 216; 11.143; more commonly in decl. we find in a sim. meaning *funestus*; cf. Sen. *C.* 1.1.6; 9.4.10; *MD* 9.11 H. 185.9); 12.1 (H. 232.7), 3 (H. 234.11), 5 (H. 236.5). Perhaps the declaimer is replying to an argument which criticizes him for forfeiting his own life—and foregoing his sacred trust as a priest—in order to save his son.

farmers uproot old trees in order to plant new ones (*agricolae antiquas arbores exstirpant ut novas inserant*; H. 25.8-9): note the triple repetition of initial *a*. This agricultural metaphor is reminiscent of Calp. 24 (H. 23.16): *insitiva stirpe*; cf. n. *ad loc.*

is to be looked forward to (*spectabitur*; H. 25.9): so H. suggests (1974) 63 & then adopts in his text; L. prefers *expectabitur*, following BC (*et in marg.* N). The meaning, however, is plain, and *specto* in this sense, though infrequent, is attested (cf. *OLD* s.v. 13). Note in the entire sent. the asyndeton, repetition of terminal *-abitur*, ellipsis. The speaker here continues the agricultural metaphor of the previous sentence.

nevertheless in younger men the promise is greater (*spes tamen minoribus maior est*; H. 25.10-11): so H. & (1974) 63, reproducing Schult., for the unintelligible and difficult *specta* (BC) emended to *expectata* (L.); Burm. had suggested *sperata* & Gronov. *exspectatio.* But H.'s *spes tamen* is ingenious, and on the mark.

loss of my sons (*orbitas*; H. 25.12): so H; *orbitatis* (B2 MN & L.); a strained apostrophe, in English at least; cf. e.g. Calp. 10 (H. 10.12-13; tears, sense of sight); 52 (H. 39.15; *virtus*); note also the apostrophe to *fortuna* in the following sentence here (H. 25.13; cf. Calp. 44 [H. 35.3-4]).

Oh Fortune, you have granted me children; will you now snatch him away? The state . . . . (*dedisti mihi liberos, fortuna; rapies? concedit alios res publica; nec hunc relinques?*; H. 25.13-14): a troubled sentence; I have accepted Schult.'s suggestion of *rapies*? for *rapuisti*, which could easily have crept into the text because of the preceding *dedisti*, and the attractiveness of repeating the terminal *-sti* (e.g. *DMin* 259.10: *tu hos coniunxisti copulastique, Fortuna*!; cf. W. n. *ad loc.*). I have supplied "him" as necessary to the sense, anticipating the *hunc* (Schult. for the confusing *hos*); cf. Calp. 44 (H. 35.3-5): *o fortuna crudelis! abstulisti mihi filium: relinque vel filiam. partiamur vel saltem liberos meos.* Alternatively, one could make the case for *rapuisti* & *hos* if it means that the father will lose his sons through his own death by suicide in any case (H. 25.19-20), but this seems excessively obscure and tortured, even for declamation.

who will strike me down? Will an executioner . . . . (*quis me feriet? carnifex innocentem, an commilito laureatum*?; H. 25.14-15): cf. Calp. 44 (H. 35.6): *quis hanc hostiam perimet; pater, sacerdos, an carnifex*? Note in the clause beginning *carnifex* the parallel structure, and the ellipsis of *feriet*, carried on into the next two sentences.

amid the altars and burnt sacrifices (*inter aras et altaria*; H. 25.15): cf. Plin. *Pan.* 1.5: *non enim occulta potestate fatorum, sed ab Jove ipso coram ac palàm electus repertus est; quippe inter aras et altaria . . . .*; also Tac. *Ann.* 16.31: *post altaria et aram complexa* (cf. Furneaux's exhaustive n. *ad loc.*). Weber 19-20 cites as additional parallels Pl. *Aul.* 606; Fabius Pictor *apud* Macr. 3.2.3; *MD* 12.26 (H. 261.6); see also e.g., Lucr. 4.1237; Verg. *Ecl.* 5.65-66; Sil. *Pun.* 1.542-543. (For the distinction between the two see e.g., Serv. *A.* 2.515; 3.305; *Ecl.* 5.66.) Weber 20 concludes on the basis of these parallels that Calp. is to be dated not before Lucan, Q., Tac. and Pliny's *Pan.*; cf. Lehnert *JAW* 113 (1902) 110.

in life . . . to my very own life itself (*in vita . . . ipsi vitae meae*; H. 25.17-18): for a similar *adnominatio* of *vita* see Calp. 24 (H. 23.6-7): *vita . . . vitam*; cf. *MD* 4.8 (H. 69.5); 13.2 (H. 266.8, 11); also *DMin* 335.16. (For repetition in the same case see *DMin* 251.5; *MD* 8.18 [H. 169.21].)

dearer . . . because of his own peril (*suo periculo carior*; H. 25.18): cf. the sentiment expressed on a sim. subject: *utinam, iudices, iuvenis illius vita praestaret, ut videretur non periculi miseratione sed caritate praelatus!* (*MD* 5.5; cf. 5.11, 12, 13, 14).

if I may not die in place of my son, I will die along with my son (*si mihi non licet pro filio, peribo cum filio*; H. 25.19-20): cf. Calp. 41 (H. 33.15-17 & nn. *ad loc.*). See also where a son offers to be a captive in his father's place *MD* 6.6 (H. 116.12): *aut vicarius ero, aut comes*; also *MD* 9.8 (H. 182.16-17): . . . *utrum vicarium mallem habere mortis an comitem.*

Declamation 27

On the law regarding rewards for heroes see n. *ad* Calp. 15 (cf. nn. *ad* Calp. 25, 26); on the death penalty for desertion see n. *ad* Calp. 15. Note that this decl. and the two following all deal with the subject of a rich man extracting the promise of a reward if he fights heroically in a war. In Calp. 27 & 28 the death of the poor man is the requested reward; in Calp. 29 it is the hand of the poor man's daughter in marriage. In all three cases the extracts provided are from the speeches of the poor men; cf. Calp. 7. On the rich man vs. poor man theme in decl. n. *ad* Calp. 6 (H. 6.13).

in war time (*belli tempore*; H. 25.23): a regular time expression: Calp. 29 (H. 26.20); 50 (H. 38.2); 52 (H. 39.6); cf. 39 (H. 32.12). The expression does not occur elsewhere in decl.

would decree to suit his wishes . . . . (*si sibi mors pauperis decerneretur*; H. 25.24): cf. Calp. 28 (H. 26.12): *si sibi mors unius decerneretur*. The *dativus commodi et incommodi* occurs frequently with this verb; cf. *DMin* 351 th.: *si reditus sibi decerneretur*; *TLL* s.v. *decerno* 148.83ff; *OLD* s.v. 5.

as for me, I kept silent when his assault was being directed against me (*ego tacui cum peterer*; H. 26.3-4): cf. Calp. 28 (H. 26.15- 16): *ego quidem verba facturus in alterius periculo nuper in meo tacui, cum praemium peteret iniustum* (cf. Weber 24).

I waited too long a time . . . . (*expectavi diu . . . .* ; H. 26.4-5): i.e., "even though it would result in my death, I was so patriotic that I wished for the rich man to fight heroically and help us win the battle against the enemy. But I waited too long; he deserted instead, making it necessary for me to act heroically in order to save the day." Schult. believes that the poor man was acting deferentially to the rich man, and also we may add with great patience (*diu*; cf. *sero* [H. 26.3]), not wanting to steal his glory (cf. *potius* [H. 26.5]) until circumstances forced him to act. The situation may be unlikely enough in real life, but not so in decl.; cf. the sit. in Calp. 17 & esp. the poor man's sentiment (H. 17.11-12).

to win . . . gratitude from the rich man himself (*ab ipso quoque divite inire . . . gratiam*; H. 26.6): i.e., in addition to the gratitude owed (and paid) to him by the state in the form of the reward (for sim. *ipse* & *quoque* cf. Liv. 8.12.9; Q. 2.5.1). The phrase *inire gratiam* is fairly common, with *a* / *ab* designating the person whose gratitude is being

won; *TLL* s.v. *gratia* 2218.69ff; *OLD* s.v. 5 b (esp. found in comedy; e.g. Plaut. *Cist.* 7; *Stich.* 514; cf. Caes. *Gall.* 6.43.5). The meaning may be reconstructed as: "the rich man ought to show gratitude to me, and not be so annoyed (and jealous) at my victory that he is unwilling to accept the gift of his life as the reward for my heroism" (cf. Schult.). Note the sim. tenor of the last sentence in this decl. (H. 26.8-9), and n. *ad loc.*

I am doing the same thing in the matter of the reward . . . . (*idem in praemio facio quod in proelio: servo civem, commilitonem meum protego*; H. 26.7-8): note anaphora of *in*, allit. of *p*, ellipsis of *facio*, the three terminations in *-io* (as well as two in *-o*), the parallel prepositional phrases, and the chiasmus after the colon. I have tried to keep a little of the flavor of the original in translating "reward . . . war"; (or, "bonus . . . battle").

you will forever be the same kind of person . . . . (*idem eris in aevum, qui semper adhuc fueris*; H. 26.8-9): so H.; cf. Burm. & L.: ... *qui supremo die fueris*. H. discusses this troubled passage ("desperately corrupt") and reaches no conclusions ([1972] 68); however he came up with the above conjecture of *semper adhuc* in his edition (cf. *app.*; on the basis of Cic. *de Orat.* 1.119: *quod adhuc semper tacui*), for the MSS *suprema die* (C), *supremo die* (*cett.*), neither of which makes any sense. Schult.'s proposed emendation, *ideo meus eris, quamvis supremo die fungeris*, is not only "not attractive" (H. [1972] 68), but it may take too many liberties, although it should not be so summarily dismissed: "therefore you will always belong to me, even when you live your last day." The poor man seems to be referring at any rate to the rich man's status as his perpetual enemy, or, more specifically, to his stubbornness, which may have been mentioned elsewhere in the speech, perhaps as a cause of their enmity, and which will continue to be manifested in his refusal to avail himself of the poor man's offer (conceivably an attempt made by the poor man to improve relations). This he may have tried before (but been rebuffed), perhaps in deferring to the rich man during the war (e.g., *tacui*; H. 26.3), until he was compelled to save the situation through his own heroism when the rich man deserted. So also one may interpret in this light *expectavi diu divitem ut ille potius* . . . . . (H. 26.4-5; cf. n. *ad loc.*; also Schult.). More likely, the poor man's sentiments are a sign of oneupsmanship, and his pose here is therefore ironic.

Declamation 28

This theme is a more complex variation of the preceding; see n. *ad* Calp. 27. In this instance (& in Calp. 29), however, the rich man does act heroically and merits a reward. The case hinges on the definition of a legal reward, and the legality of granting a reward before it is earned. I have placed a period after *inimicus* (as does H. [cf. H. 26.11]; Burm. & L. end a longer sent. with *decerneretur*), in keeping with the predominantly short, clipped style of these theme statements.

to suit his wishes (*sibi*; H. 26.12): for sim. see Calp. 27 (H. 25.24) & n. *ad loc.*

according to the laws (*per leges*; H. 26.16): slightly unusual prep. phrase instead of just the abl.; cf. *DMin* 277.1; 302 th.; Weber 21. However, in the sense "as far as _____ is concerned," it is common with *licet*, which perhaps here is sim. in effect to *posset petere* (H. 26.17); cf. *OLD* s.v. *per* 9 b, which cites Caes. *Civ.* 3.1.1: *is . . . erat annus quo per leges ei consulem fieri liceret.* A just reward would generally have included land, a house, and sim., *after* the deed of heroism; cf. Schult.

against the same small number of innocent individuals (*per tot innocentium capita*; H. 26.17): i.e., the two poor men. Thus *tot* here atypically refers to a rather small number; cf. *Epic. Drusi* 339; Burm., & *OLD* s.v. 3. D.A. Russell, *per litt.*, prefers to keep the more normal meaning of *tot*, identifying the passage as an example of exaggerated expression ("the rich man is indifferent to how many lives he endangers").

this man . . . that man . . . this man . . . that man (*hunc relinquit, hunc arripit; hunc timore punit, hunc morte*; H. 26.18): note the quadruple anaphora, triple repetition of terminal *-it*, & asyndeton. For sim. repetition of *hunc* in the sense of "this man . . . that man" see Verg. *A.* 7.473-474; cf. 12.789. It would appear that such a repetition would be intentionally confusing to emphasize the random, arbitrary nature of the rich man's revenge.

Declamation 29

Another variation on the themes of Calp. 27 & 28 (on which see nn. *ad* th.). In this case the rich man / war hero asks for the hand of his enemy's daughter rather than his death. Such a situation was undoubtedly appealing to the declaimers, offering rich possibilities for inventive and colorful speeches dealing with the topics of forced marriage and class differences. For another, even more bizarre twist on employing a reward to obtain a marriage, see Calp. 22.

the other daughter (*aliam*; H. 26.23): *codd.*, Burm., H.; one would expect *alteram* (so L.), as in the tit.: *alteram filiam petens*; cf. H. *app.* Nevertheless *alius* is sometimes used loosely in the sense of "the second," most notably in decl. of a twin brother (*MD* 8.5 [H. 155.16]: *in alio fratre*); cf. Caes. *Gall.* 1.1.1: *Gallia est omnis divisa in partes tres, quarum unam incolunt Belgae, aliam Aquitani, tertiam qui* . . . . ; cf. Apul. *Met.* 5.10; 10.14 (*TLL* s.v. *alius* 1648.70ff; *OLD* s.v. *alius* [1] 8; [2] 5).

before he fought heroically, he made his demand (*priusquam fortiter faceret, postulavit*; H. 26.24): note the explosive force of the repeated initial *p*'s and *f*'s, plus the numerous *t*'s.

let the rich man marry some other woman . . . . (*ducat dives aliquam, sed aequalem; ducat volentem*; H. 27.2): strong anaphora of the initial verb *ducat*, allit. of *d*, asyndeton.

whether you like it or not (*velis enim nolis*; H. 27.2-3): see n. *ad* Calp. 37 (H. 31.17).

see my filthy dress and grief, my moaning and mourning: is the daughter of your enemy, a man such as this, the object of your passionate love? (*squalor et maeror, gemitus et luctus: inimici filia talis adamatur?*; H. 27.3-4): punctuated so by L. & H.; but Burm. joins this statement to the previous sentence with a comma (. . . *amator inimicus, squalor* . . . .), with a comma after *luctus*, a period after *inimici*, and a new sentence beginning with *filia*. This makes as much sense as L. & H.'s punctuation, and obviates the clumsy separation of *inimici* & *talis*: "see your enemy's filthy dress and grief, his moaning and mourning. Is the daughter of such a man the object of your passionate love?" In any case *talis* must be gen., referring to the poor man. Note the rhyming pairs of,-*or*, -*us*, with ellipsis and asyndeton.

not even livestock are yoked together . . . . (*ne pecora quidem iugum nisi paria succedunt*; H. 27.5-6): another agricultural metaphor;

see Calp. 24 (H. 23.16); 26 (H. 25.8-9); cf. Ov. *Ep.* 9.27-30: *at bene nupta feror, quia nominer Herculis uxor,/ sitque socer, rapidis qui tonat altus equis./ quam male inaequales veniunt ad aratra iuvenci,/ tam premitur magno coniuge nupta minor.* On *paria*, animals as matched pairs in a team, cf. Grat. 263; Afric. *Dig.* 21.1.34; Paul. *Fest.* p. 221 M; *TLL* s.v. *par* 264.84ff; this passage cited 265.4; note esp. Verg. *G.* 3.169: *iunge pares . . . iuvencos*); cf. *OLD* s.v. *par* 6 b. Generally on the metaphor of a yoked pair as marriage see Courtney n. *ad* Juv. 6.207-208. Here *succedo* takes an accus. direct object (*iugum*); the dat. is more common (*OLD* s.v. *succedo* 1 b; cf. Burm.).

shall I slip open my daughter's noose . . . . (*laqueum filiae solvam, an flammeum superponam? facem nubenti praeferam, an rogum iacentis accendam?* H. 27.6-8): note the chiastic relationship in thought between the two sentences: death / marriage; marriage / death. He refers to the surviving daughter, who, he is convinced, will commit suicide shortly (cf. H. 27. 9-11; also Schult.). Loosening the noose here would seem to mean assisting his daughter in committing suicide (cf. *TLL* s.v. *laqueus* 961.33ff) by opening it for her, if not slipping it off her after she is dead (which would provide a better parallel to *rogum iacentis accendam*). On hanging as a form of suicide see Calp. 8 (H. 8.11); 10 (H. 10.4; 11.1-2); 42 (H. 33.21). On the many ways of achieving death, see W. n. *ad loc. ad laqueum*, *DMin* 260.24. Note also the piling up of the terminations *-am* (cf. *quid faciam*; H. 27.6) and *-um*; also the mournful effect of the many *m*'s.

fiery colored wedding veil (*flammeum*; H. 27.7): the term is derived from its flame red color; in a sense it anticipates the fire imagery in the next sent.: *facem nubenti praeferam, an rogum iacentis accendam?* H. 27.7-8). Cf. Courtney n. *ad loc. flammea*, Juv. 2.124.

in one way, of course, a bribe . . . . (*aliter enim merces in timore promittitur, aliter honos in pace praestatur*; H. 27.8-9): H. (*app.*) suggests transposing this sentence directly after the first sentence of the decl. (H. 26.24-27.1: i.e., *priusquam fortiter faceret, postulavit, confisus id sollicito extorquere se populo quod impetrare a victore non posset. aliter enim . . . .*). D.A. Russell, *per litt.*, concurs: "*enim* makes a connection, so that the sentence is actually a part of that excerpt." Note the anaphora of *aliter*, the parallel structure of contrasting noun subjects (*merces / honos*), temporal prep. phrases (*in timore / in pace*), and verbs (*promittitur / praestatur*). Especially notable is the very negative *merces*, " a bribe," which is extorted from the state in time of trouble (cf. *extorquere*; H. 27.1), as opposed to the more normal way in

which a reward is given, after the fact, and as a mark of distinction (*honos*; H. 27.9).

she will hurry for the noose .... (*festinabit ad laqueum; properabit ad mortem*; H. 27. 9-10): parallel construction with asyndeton; note the sim. terminations of the synonymous *festinabit* & *properabit*—the emphasis here is on speed. On the future tenses here see H. (1972) 68, citing Schult.'s emendation of the *festinavit* & *properavit* (*codd.*, Burm., L.). The surviving daughter is meant as is obvious from the subsequent statement: *credite vel sorori. si vicerit, ad patrem revertetur; si victa fuerit, ad sororem.*

Declamation 30

Virtually the same situation occurs in Sen. *C.* 2.4; however there the grandfather did adopt the his son's child (*adoptavit puerum*; 2.4 th.), while here he just wants to do so (*vult illum senex in familiam recipere*; H. 27.17-18), although one of the declaimers speaks as though the adoption actually did occur (*adoptat alienos*; H. 28.1). But this is undoubtedly an exaggeration, at least according to the wording of the theme. This makes for a little difficulty in the interpretation of *susceptus* in the title (*nepos ex meretricio susceptus*), for it could either mean "adopted," which is precluded by the wording of the theme, or more likely "acknowledged as legitimate" (i.e., both by the grandfather, and previously by his son); cf. *OLD* s.v. *suscipio* 4, which notes the ambiguity in the use of the term. On the relationship between the two versions of this decl. see Bornecque 31. On *abdicatio* see n. *ad* Calp. 18 (cf. n. *ad* Calp. 14); on a son charging a father with insanity, see n. *ad* Calp. 8. The case hinges on the definition of *dementia*; as the declaimer Cestius puts it (Sen. *C.* 2.4.9): *dementia . . . res est sanitati contraria*; cf. Q. 7.3.2; 7.4.25; also W. n. *ad DMin* 316.1, citing as well *DMin* 349.2, 4. On the indications of *dementia* see n. *ad* Calp. 8; & esp. W. n. *ad DMin* 349.4. The dissolute son has been disowned because of his affair with a prostitute, but the term *luxuriosus* also encompasses the more general charge of extravagant living which in decl. includes sex, food, and drink; cf. Calp. 9 (H. 8.21); 17 (H. 17.15, 21); 20 (H. 19.12); and, more generally W. n. *ad DMin* 260.7, with full citation.

<the dissolute son> (<*luxuriosum*>; H. 27.13): Pith., who also suggested *ob amorem* (cf. *DMin* 344 th.: *ob amorem meretricis*) for the difficult *ab amore* (*codd.*); both adopted by H.(27.13-14); cf. *app.*

more time (*amplius*; H. 27.19): the first in a series of comparative adverbs in Calp. 30: *potius* . . . . *potius* (H. 27.21); *liberius* (H. 27.23); *indignius* (H. 28.3); cf. Weber 21. Note the play on the infinitives *dolere* & *dicere*.

undoubtedly it is a devoted son . . . . (*pius est sine dubio filius qui in patre mentis errorem morbo potius assignat et fato quam moribus*; H. 27.20-21): note the emphatic position of *pius*. The son is put in a very difficult position when he brings his own father into court. He tries to lessen the burden by stressing that his father's lapse is because of his illness; cf. the following sent.: *miseranda potius in meo patre quam accusanda dementia est* (H. 27.21-22; note also here the rhyming *-anda* terminations of the contrasted passive periphrastics; for necessity see the preceding *necesse est me . . . amplius dolere quam dicere*;

H. 27.19). For *dementia* as a *morbus* see Sen. *C.* 2.3.12; 2.6.5; 10.3.7-8; cf. W. n. *ad DMin* 316.1. Note the advice given in *C.* 2.6.5: *non vitia patris accusare solere, sed morbum.* Note the sim. sounding couplet *morbo . . . moribus.* On assigning madness to fate cf. Tac. *Ann.* 1.39; also *Hist.* 4.72. A son often chose in such circumstances to have a *patronus* present his case instead, in order not to appear to be demeaning the *pater familias* and acting impiously; cf. Bonner 52 & n. 7, 53.

whether a man is sane who both disowns his own flesh and blood and adopts strangers (*utrum sit sanus qui et suos abdicat et adoptat alienos*; H. 28.1): cf. H. 28.4-5: *dixit ille suum filium; dixit ut amator; dixit immo ipse iam parum sanus.* Among the traditional signs of madness is failure to recognize family; see Calp. 23 (H. 22.14-15, 18-19); 31 (H. 31.13-14); also W. n. *ad DMin* 349.4, citing Sen. *Ben.* 3.1.5; Spengel 1.395.14; another sign is inconsistent behavior, on which see W. ibid., citing also *DMin* 314.19; Walz 8.180.10. On the general sense of the sentence cf. Sen. *C.* 2.4.6: *severissimus pater abdicavit etiam quem sciebat suum.* It is hard to do justice in the translation to the declaimer's clever antitheses put in chiastic order: *suos / alienos* : *abdicavit / adoptat.* On the general idea of adopting strangers as heirs into a family see Calp. 24: *nec sacra gentilicia insitiva stirpe corrupit* (H. 23.16-17; cf. n. *ad loc.*).

whether (*utrum*; H. 28.1): instead of the more simple and regular *num,* an unusual construction remarked upon by Weber 21, 22; see *OLD* s.v. *utrum* 3, which cites this passage; also Cic. *Ver.* 2.167; *Flac.* 45; Nep. *Eum.* 6.1. The regular *utrum . . . an* occurs later (H. 28.3-4).

of course it is (*quidni*; H. 28.2): H.'s conjecture (citing Cic. *Quinct.* 69) for *quidem* (MN; Burm. & L.); cf. H. *app.*

but in the case of such a boy . . . . (*in quo puero nescio quid sit indignius, utrum patris origo, quod est dubia, an matris origo, quod certa est*; H. 28.3-4): cf. Sen. *C.* 2.4.5 (see Bornecque 31 & W. n. 4 *ad loc.*; I, 303): *pater istius incertus est; bene cum ipso ageretur si et mater.* Note the studied parallels within the *utrum . . . an* clauses, esp. with the repetition of *origo* and the antithetical, balancing *patris origo . . . dubia / matris origo . . . certa.* The speaker cleverly casts doubt on the child's legitimacy because of the well-known profession of the mother; see also n. *ad* Calp. 2 (and the decl. passim).

he said it was his son, he said it as a man in love . . . . (*dixit ille suum filium; dixit ut amator; dixit immo ipse iam parum sanus*; H. 28.4-6): striking triple anaphora; asyndeton. W. compares this to Sen. *C*. 2.4.10 (n. 3 *ad loc*.; I, 309): *Latro patri pepercit; puerum pressit et dixit fratris filium non esse et ne fratrem quidem hoc fateri voluisse; illa verba aegro imperata*. On *sanus* see n. *ad* H. 28.1.

Declamation 31

On the punishment of adultery in general, see nn. *ad* Calp. 17, 48, 49. For the law that allows sons to kill mothers caught in adultery, see n. *ad* Calp. 23. The addition of sisters to the statute here probably stems from Greek law; cf. Lanfranchi 445 & nn. 1, 2; Bonner 121 & n. 2. On *abdicatio* see nn. *ad* Calp. 14 & 18. While the law quoted specifically mentions the offense of adultery (*in adulterio*; H. 28.8), the theme itself does not specifically state the offense, but rather employs the circumlocutions *sororem deprehendisset* and *invenit et matrem* (H. 28.9, 10).

he came to his senses again (*resipiit*; H. 28.10): cf. *DMin* 290.4 (*resipiscens*) in another case where a man regains his sanity; see W. n. *ad loc. sentiens*; also *MD* 15.12 (H. 315.13): *resipisceres.*

my sister went astray . . . . (*soror erravit, insaniendum est; mater adulteravit, domo patria carendum est*; H. 28.11-12): note the studied parallelism here between the clauses, and the asyndeton in the text as restored (cf. H. *app.*). *OLD* s.v. *erro* 6 notes that the verb in this usage is frequently employed "to minimize the offence in question"; cf. Sen. *C.* 10.2.7.

the upshot was . . . . (*hic exitus venit, ut, ex quo malo furor coeperat, ex eo sanitas nasceretur*; H. 28.12-13): i.e., after killing his sister in a mad outrage, he suffered from insanity and then became sane again (*resipiit*; H. 28.10; see n. *ad loc.*). Now, by implication, once again sane and cured of mad fury, he could not in this state of mind kill his mother. For *exitus* in a sim. meaning see Calp. 7 (H. 7.23). This translation suggested by D.A. Russell, *per litt.*

Lady Luck wanted to put me to the test . . . . (*voluit me explorare fortuna an agnoscerem meos*; H. 28.13-14): here the young man uses the pretext (*color*) of testing to justify not killing his mother; cf. *DMin* 259.15 & W. n. *ad loc. temptat*, with many citations. He is apparently saying this: "I went insane when I caught my sister, and did not realize that she was my sister at the time that I killed her. Then Lady Luck wanted to find out whether I really did regain my sanity by putting me to the test to see if I could recognize my mother (when I caught her in adultery). Obviously because I did not kill her, I did recognize her, and thus I was no longer insane as was the case when I caught my sister." Failure to recognize close family members was considered a sign of insanity; cf. n. *ad* Calp. 30 (H. 28.1). For personification of *fortuna* see Calp. 26 (H. 25.13); 42 (H. 34.3); 44 (H.35.3-4).

suppose that this is the punishment for an adulteress . . . . (*si haec poena adulterae, quod pudori super?*; H. 28.14): *quid* (L., H.). The text as it stands does not make sense. I have read *quod* (C) for *quid* ; i.e., living with the disgrace is worse punishment for an adulteress than death. On the dat. *pudori*, cf. *OLD* s.v. *supersum* 5 (here *super* = *superest*; cf. *OLD* s.v. *super* 4); for *pudor* in this sense see *OLD* s.v. 4. Alternatively (and less satisfactorily) one could translate *quid* as "in what respect?, to what extent?" (*OLD* s.v. *quis* 15), and understand "she" as the subject of *super[est]*: thus, "if this is the punishment of an adulteress [i.e., to let her live], in what respect does she survive her dishonor?" D.A. Russell, *per litt.*, suggests retaining the *quid* and translating, "if this [i.e., to be left unmolested, while the son is disowned] is the adulteress's penalty, what is the advantage of chastity?"

Oh sanity, coming at the wrong time . . . . (*o importuna sanitas, ideone redisti, ut mihi adulterium matris ostenderes?*; H. 28.15-16): for *importunus* in this sense, cf. Verg. *G.* 1.470 (e.g., *OLD* s.v. 1 c cites only these two examples, but see *TLL* s.v. 664.37ff for many additional ones). It occurs only here in decl. & is the only coupling of the word with *sanitas* in Latin. I.e., after suffering a fit of insanity, during which he killed his sister, sanity, which has now returned, prevents him from killing his mother, thus resulting in his *abdicatio* by his father (see W. n. *ad DMin* 256.2). His sanity therefore came to him at the wrong time; he should have remained insane and killed his mother also, in which case he would not have been disowned / repudiated by his father. The sentiment is ironic. Read *ostenderes* here for C's *ostenderis* (H., with W.'s concurrence; cf. H. *app.*). This seems to be a new extract (D.A. Russell, *per litt.*).

disinherited, at this point practically out of my mind once again . . . . (*abdicatus hic iterum quasi furiosus errabo, sed certe sine mente secura*; H. 28.16-17): i.e., he is afraid that now, rendered practically insane again by the course of events, he may kill his mother (as he did his sister).

Declamation 32

On desertion / treason (*proditio*) see nn. *ad* Calp. 7 & 15 (in which a similar situation exists); on the rewards for heroes see n. *ad* Calp. 25; on *abolitio iudicii* in cases of *proditio* see n. *ad* Calp. 15 (also see Calp. 25, 27; cf. 26); cf. the somewhat sim. *DMin* 287 & W. n.; also 371 & W. n. *ad* th.; for the phrase *abolitionem iudicii* (H. 28.21) cf. *DMin* 249 th.; 287 th., 2; 294.5; also 375 th. Another confrontation between a military man and an orator occurs in Calp. 47, where the two are both seeking the consulship (see also Calp. 50, where a poor man tries to harass a rich, unsuccessful general). Such a competition would be especially familiar to younger students fresh from the study of Vergil with the prominence in *A.* 11 of the contention between Drances and Turnus (esp. Turnus' scathing reply to the orator; *A.* 11.378-444); cf. Cic. *Mur.*, esp. 19-30. Note also *DMin* 268 in which three brothers, an orator, a physician, and a philosopher, contend over their father's will which left his legacy to the one son who benefited the state most; W. (n. *ad* 268) provides an exhaustive documentation of the praise and blame accorded various occupations in the ancient world, esp. in a rhetorical context. See also specifically on physicians n. *ad* Calp. 13. In this preliminary action the orator son argues against the use of his brother's reward for heroism as an occasion to squash the indictment against their father. Two points are prominent: (1) the orator son would like to conduct the defense, since it would demonstrate his virtues in the conduct of his profession (and something which, by implication, his soldier brother would be less proficient at, in contrast to the glory, and the reward, he won in war); (2) to support his contention that their father should stand trial, the orator son argues that he is innocent, but that by cancelling the trial, this innocence would never be put to the true test of a trial, thereby impugning their father's reputation.

it is obvious . . . . (*quemadmodum vixerit pater, apparet in liberis*; H. 28.22): the success of his sons in their chosen professions is proof of their father's virtue, and thereby also of (1) his inability to commit treason, and (2) the certainty of his acquittal. Cf. *DMin* 287.3: *sciebam quomodo vixisses, quomodo causam tuam egissem* (also W. n. *ad loc.*).

it is conducive to the public interest . . . . (*publicae utilitatis est omnium reorum iudicari causas ne aut nocens evadat poenam aut innocens patiatur infamiam*; H. 28.22-29.2): cf. Cic. *Sul.* 25: *populi utilitati magis consulere quam voluntati* (see also Ulp. *Dig.* 43.9.1.1). For the phrase *publica utilitas* in decl. see *DMin* 263.1; 333.16; 339.15; *MD* 4.4 (H. 65.7); cf. Sen. *C. Exc.* 6.5 (H. 162.32). Note the studied parallelism in the *aut . . . aut . . . .* construction. The father's reputation

is a repeated theme; he risks *infamia* if he does not have his name cleared in a trial; cf. *infamas* (H. 29.4), *fama* (H. 29.5), & note the play between *nocens* & *innocens* (H. 29.1-2), also *innocentiam* (H. 29.6-7); see n. *ad* H. 29.3-6.

his glory (*gloria*; H. 29.2): whose *gloria* is it? If it is the soldier son's, "The speaker is saying that his sucess as a *vir fortis* makes it incumbent on them both to be courageous about their father's trial" (D.A. Russell, *per litt.*). If it refers to the father, accused of treason, it would either be ironical, or refer to his being declared innocent in a trial, and also his pride in his sons' display of virtue in defending him. This could also be a rather general *sententia*, and not refer to any specific individual. Parallelism again evident in the subsequent *quantum* . . . *tantum* . . . . construction.

while you are seeking . . . . (*innocentiam patris dum liberare quaeris, infamas. homini verecundo in eiusmodi crimine longe gravior est fama quam poena*; H. 29.3-6): cf. in a sim. situation *DMin* 287.3: *accedit quod qui semel delatus est reus non potest absolvi nisi accusetur; omnes dixissent; "causae patris diffidit vir fortis."* Note the emphatic position of *innocentiam*, and the repetition here of the related ideas of *innocentia* and *infamia* from H. 29.1-2; see n. *ad loc.* H. 28.22-29.2.

there's an old saying . . . . (*vetus, iudices, dictum est, ut aurum igni, itidem innocentiam iudicio spectari solere*; H. 29.6-7): cf. e.g., Cic. *Fam.* 9.16.2; *Off.* 2.38; Ov. *Tr.* 1.5.25; Sen. *Dial.* 1.5.9-10; Plin. *Nat.* 33.62. The commonplace in its moral sense (with *probare*) is prominent in the Vulgate Bible; e.g., *Prov.* 17.2-3: *et inter fratres hereditatem dividet sicut igne probatur argentum et aurum camino ita corda probat Dominus*; cf. *Sir.* 2.5; *Zech.* 13.9; *Rev.* 3.18; *4Ezra/Esdr.* 16.74-75. For *itidem* (its only occurrence in decl.) cf. Apul. *Apol.* 10.

it is more fitting . . . . (*melius est patri virtutum tuarum argumento te prodesse quam praemio*; H. 29.7-8): the orator is taunting the soldier to defend their father's life in court, rather than simply (and too easily) freeing him through the exercise of his reward privilege of *abolitio iudicii*. Note the studied use of *p*'s and *t*'s; the words are being spit out contemptuously. The orator will demonstrate his superiority as a *filius pius* in court while exercising the arts of peace, and is thereby challenging the soldier to put his own virtues to the test by helping him conduct the defense of their father (where, naturally, the orator would demonstrate his clear superiority). Note also the play on *argumento*, here in the sense of physical proof or activity, but which calls to mind its more technical rhetorical sense as a part of a speech (cf. *Her.* 2.8).

Declamation 33

On the torment of a man in love with a *meretrix* (not a slave but a poor man in this case) see *MD* 14; the woman's point of view in such a case is expressed by her advocate in the paired *MD* 15. There was strong official disapproval of sexual relationships (or marriage) between free Roman women and slaves; see B. Rawson, "The Roman Family," in Rawson (1987) 27 & n. 79 (p. 52). On slaves in Sen. *C.* see Migliario 533-538. On the appeal to the tribunes in cases of alleged unjust punishment (here crucifixion), see n. *ad* Calp. 17.

the term "crucifixion" . . . crucified (*crucis nomen . . . cruciaverit*; H. 29.12-13): a play on the literal and metaphorical (i.e., torment in love) meanings of the terms for crucifixion; on the latter motif, common in love poetry see e.g., Catul. 76.10; 85.2; 99.4, 12. See also Calp. 37 (H. 31.16- 17) *in amore tormenta* (& n. *ad loc.*); cf. a case of mental anguish (also with allit.) in Calp. 49 (H. 37.22-23): *cruciatur conscientia, pudore torquetur.*

the personal and private account of a slave (*peculiare secretum*; H. 29.13-14): referring to the money or possessions which a slave was informally allowed to keep and administer on his own, usually with intent of so managing and adding to it that he could eventually use the accumulation to buy his freedom; cf. n. *ad* Calp. 14 (H. 15.1). Here the slave applies the term metaphorically to the love in his heart for the *meretrix.*

Cupid (*amor*; H. 29.14): as is common, *amor*, personified as the god of love (or love itself), here to be taken as = Cupid; cf. Calp. 2 (H. 1.15); *OLD* s.v. 4.

a crime on my part, or a moral lapse (*meum crimen, aut error*; H. 29.15): for excessive love as a *crimen* see Pichon, s.v. *crimen*, "atque in summa *crimen* dicuntur admittere quicumque nimium libere amori voluptatique indulgent" (p. 116), and refs. there cited; for *errare* in a sim. amatory context see Pichon s.v. *errare*, "longe alio sensu *errare* est nimis amoris impetui se ducendum praebere" (p. 137). The phrase is reminiscent of Ovid's cause for banishment: *perdiderint cum me duo crimina, carmen et error* (*Tr.* 2.207); Ov. also likes the direct conjoining of *crimen & error*; cf. *Ep.* 17.48; *Met.* 3.141-142; *Pont.* 3.3.75.

Declamation 34

On the law dealing with rape see n. *ad* Calp. 16. Here it is given in its full rather than abbreviated form; see n. *ad* Calp. 14 (H. 14.21). A nearly identical theme occurs in S. *C.* 3.5, in which the isolation of the girl to prevent her appearance in court seems less severe—apparently simple confinement at home, as the title implies (*pater raptam continens*; cf. th.), in contrast to forcible imprisonment stated in the Calp. title (*raptam pater vinculis tenens*; on the extended meaning see *OLD* s.v. *vinculum* 1); cf. *rapta vincitur* (H. 30.2); but note the wording *raptam pater vinculis continet* in the th. (H. 29.18-19). Both sides of the case are given in Sen., in which the rapist for the most part complains that the father is preventing the girl from appearing in court, at least partly to torment him with the fear of death until a decision is finally made. See also Calp. 25 (& n.); punishment in decl. can be deferred for 30 days; but cf. W. n. 1 *ad loc.* Sen. *C.* 3.5 (I, 408). We may strongly suspect collusion here between the rapist and the girl to effectuate a marriage opposed by the father; the declaimer apparently is confident in the girl's eventual favorable decision. In his argument he attempts to force the father's hand in the face of the latter's reluctance to let the normal legal process take place.

the laws have indeed provided.... (*nihil equidem leges clementius paraverunt quam quod de lege raptarum non licet alii iudicare*; H. 29.20-21): *alii* means that the girl must exercise the legal decision, and not her father, who is interefering with the normal legal procedure in such a case. The MSS, Burm., & L. have *aliud*; L. places a period, & Burm. a colon, after *raptarum*; both have a colon after *iudicare.* I have accepted H.'s (cf. *app.*) restoration of the necessary sense here with *alii* (or, alternatively, *alium*), and also his punctuation (he cites Cic. *Cat.* 4.11; Ulp. *Dig.* 43.12.1.16).

for the parties directly concerned here (*his*; H. 29.21): just the rapist and the raped woman, thus again pointedly excluding the father from consideration.

now produce my judge (*sed exhibe iudicem meum*; H. 30.1): i.e., the raped girl. Here *sed* elaborates the previous statement *sum reus* ("I am the guilty culprit"), in the sense of "yes, and what's more, and . . . too" (cf. *OLD* s.v. *sed* 3).

By God and all that is holy! In what kind of state .... (*pro deum atque hominum fidem! in qua civitate raptor solutus est? in ea rapta vincitur!*; H. 30.1-2): *solutus* is an adj. (= *liber*) with *est*, "free from

bonds . . ." etc. (cf. *OLD* s.v. *solutus* 1), not a perf. pass. of *solvo* (see H. *app.*), and is to be contrasted with the present sense of *vincitur*; cf. Liv. 2.23.8: *nexi, vincti, solutique, se undique in publicum proripiunt.* At this point the rapist is not imprisoned or confined, but, of course, the girl is. For *in ea* H. (1972) 68 proposes *immo*, but apparently later changed his mind since he has left this speculation out of the text and does not mention it in the *app.* The meaning of the text is quite clear as it stands. Cf. Calp. 20 (H. 19.14- 15): *pro deum atque hominum fidem! qua in civitate prostitui licet, mori non licet?* I have changed the punctuation to suit my interpretation of a rhetorical question followed by an exclamation. Burm. L., & H. have a comma after *est*; Burm. & H. place a question mark after *vincitur*, while L. has a period. Note the play on *raptor* / *rapta* and parallel structure of the clauses.

Declamation 35

The two parties are charging each other with the crime of poisoning, on which see n. *ad* Calp. 12 (also a stepmother involved in poisoning; a natural mother is accused of poisoning her daughter in Calp. 40). The situation here of mutual accusation is termed *anticategoria*, on which see Q. 3.10.4. These occur infrequently in decl., but, probably because of the dramatic possibilities, usually stepmothers are involved; cf. e.g., Sen. *C.* 7.5 (& W. n. 2 *ad loc.* [II, 101]); *MD* 1 & 2 (but not in *DMin* 321). Simonds 80 compares to this case only the very vaguely sim. Sen. *C.* 9.5.

the man brought home a stepmother for his boy to succeed the previous wife (*superduxit ille puero novercam.*; H. 30.6): cf. below, *superducta* (H. 30.8). The verb is a generalized term for replacing a wife either after divorce, as here, or after her death. Usually it is associated with the dat. *commodi et incommodi* (*OLD* s.v. *superduco*); cf. *DMin* 373 th. (*superduxit filio novercam*); 381 th. (*filio superduxit novercam*; also a case where a stepmother is indicted for poisoning). See also W. n. *ad loc. DMin* 373 th., where he also cites *RLM* 333.33; H. Dessauer, *RhM* 56 (1901) 419. See also W. n. *ad loc. DMin* 327 th., who discusses the sim. term *introducta* in a sim. situation of a *noverca*. Sen. omits or avoids the use of *superducere*. The occurrence of the word is used as evidence to date the *DMin* after Q.; W. (1984) XV & n. 13.

uncertain symptoms suggesting indigestion or poisoning (*signis ambiguis cruditatis et veneni*; H. 30.6-7): these would include *livores et tumores*; for full discussion see n. *ad* Calp. 12 (H. 12.7).

don't evaluate the motives for this business before you evaluate the family designations (*comparate . . . non ante rerum argumenta quam nomina*; H. 30.10-11): the speaker wants the jury to focus on the feelings of a natural mother for her son vs. those of a stepmother, knowing full well the general prejudice against stepmothers (cf. n. *ad* Calp. 22 [H.20.23]). For a similar emphasis on the strength of blood relationships cf. *MD* 1.6 (H. 6.14-16, where a son is accused of murdering his father): *dicas necesse est, quae huic cum patre odia fuerint, quam violenta dissensio inter sacrorum infinita nominum pignora . . . .* (cf. in a slightly diff. context *MD* 5.7 [H. 91.15ff]). See also in a posioning case *DMin* 246.2: *vos aestimabitis quid de persona hac sentias: non fecisset hoc mater; certe, quod mihi satis est, pater non fecit*; cf. W. n.

ad loc., who cites also *DMin* 350.10. On the traditional association of stepmothers with poisoning children see Q. 5.10.19 (cf. Calp. 12, 40; *DMin* 327.3).

it is a formidable matter .... (*grave est . . . longe gravius*; H. 30.15-16): cf. n. *ad* Calp. 23 (H. 22.17-18). Note the repetition of the adj. in its pos. & superl. degrees; both take infinitives here.

you, the father, have passed judgment .... (*iudicasti, pater, qui et repudiatam non accusando absolvisti et uxorem novam non defendendo damnasti*; (H. 30.18-19): note the terminal assonance of the three *-sti* verbs, the studied parallelism of the *et . . . et* clauses (cf. the immediately preceding *et hic veneno . . . et illa mendacio*; H. 30.17-18; also *et . . . et* in H. 30.9-10), the repetition of *non*, the paired abl. gerunds (both with contrasting dir. objs.) *accusando . . . defendendo*, allit. of *n* and *d*. On the thought see Suet. *Aug.* 56.3: *cum Nonius Asprenas artius ei iunctus causam veneficii accusante Cassio Severo diceret, consuluit senatum, quid officii sui putaret; cunctari enim se, ne si superesset, eripere[t] legibus reum, sin deesset, destituere ac praedamnare amicum existimaretur . . . .* (cf. Schult.). The declaimer here imagines that the husband (understandably in such a case) distanced himself from the legal proceedings and left it up to male family members of both his present and former wives to conduct the legal proceedings.

Declamation 36

The law making a deserter a slave to his commander is unique in decl. (Lanfranchi 430-431); the more usual punishment in decl. is execution; see n. *ad* Calp. 15; also Lanfranchi 425-431; Bonner 109-110. On rewards for heroes see nn. *ad* Calp. 15 & 25. The father chooses the death of his son as his reward because he expects the general to use the son / slave as a sexual object, esp. since he was *speciosus* (H. 30.20; 31.1); see also Calp. 45; cf. 39. As in Calp. 3, 39 & 45 the subject of homosexuality is delicately and indirectly handled; cf. nn. *ad* Calp. 3 th. & *ad loc.* H. 3.10; cf. e.g. *DMin* 292, also a case of a *speciosus* under another man's control. The *status* of the case is the conflict of two statutes (*contrariae leges*). One could also argue (but *speciosus* and the pervading moral tenor of the excerpts make this less likely) that the general intended to mistreat, torture, and eventually execute the young man as could be done to slaves (Calp. 17, 23 & 33).

+ institutes a proceeding according to the law (*iure + agit*; H. 31.2): + *erit* H., following B and also C (which shows a small space preceding *erit*). Burm. & L. adopt *egit* (MN), while Pith. prefers *agit.* Up to this point, all the verbs have been perfects; the one main verb and its dependent subj. which follow are present. The phrases *iure egit* & *iure erit* and sim. are unparallelled in decl. (PHI CD ROM 1991; but cf. *erit in iure libertatis*; *DMin* 342.7—a somewhat different case); on the other hand we do find good parallels to *iure agit* in Sen. *C.* 5.5 (= H. 155.12-13): *nihil inter te et pauperem interest, si iure agamus* and also in *DMin* 279.6: *sic defenderetur si iure tecum ageret.* The sense of the context, the tense of the last sentence of the theme, and the parallels cited argue strongly for *agit.* In typically abbreviated fashion, the excerptor tells us here that the general is acting under the prerogative of the law to make the youth who deserted his slave.

if I may not free my son, please at least allow his execution (*filium meum si liberare non licet, saltem liceat occidere*; H. 31.3): it appears that his request is for his son to be handed over to him for execution, probably under the terms of *patria potestas* (referred to in decl. in such instances as *lex indemnatorum*; cf. n. *ad* Calp. 24); normally this would require due cause, as desertion would be, but not an anticipated case of sexual misconduct (as could be envisioned here). On the other hand, the father may be asking (although this is not made obvious in the text) the court to allow the normal course of prosecution and execution to take place under the statutes for desertion as a capital crime (see n. *ad* Calp. 36). Note the chiastic arrangement of *licet / liceat* and their two

dependent infinitives; also, allit. of *l*, and the especially emphatic initial position of *filium meum*, serving as the object of the infinitives *liberare & occidere*. One is tempted to ask about the third possibility of the poor man asking as his reward for the son simply to be freed. However, if he were obviously guilty (and there is no dispute in our text on this point), a traditional Roman father, esp. in decl., would not feel reticent about execution (see also n. *ad* Calp. 24).

do you suppose that.... (*creditis... quod filio meo bene inimicus velit, pater nolit?*; H. 31.4-5): *quod* clauses plus the subj. after *verba sentiendi et dicendi* are infrequent until later Latin (after the 1st C., AD); cf. *OLD* s.v. *quod* 5, which cites this passage; also H. (1986) 2291 & n. 59. Note the parallel occurrences of the contrasting forms *velit / nolit* also in asyndeton (cf. *velis nolis* Calp. 37 [H. 31.17] & n. *ad loc.*). In stronger contrast is the subsequent *non quidem velle, sed malle* (H. 31.5). The speaker is playing with the paradoxical situation here of a father pleading to kill his son, while his enemy wants to keep him alive. The suggestion here, delicately phrased, is that his fate as the rich general's slave is, in fact, worse than death.

imagine... how much more serious those misfortunes are.... (*vos cogitate quanto sint mala illa graviora quorum sunt etiam remedia crudelia*; H. 31.6-7): cf. Calp. 10 (H. 10.16-17): *nec remedia quaerenda sunt ubi maior<is> supplicii sanatio* & n. *ad loc.* Cf. Liv. *Praef.* 9: ... *donec ad haec tempora quibus nec vitia nostra nec remedia pati possumus perventum est.* Here again the declaimer is carefully referring to the prospective sexual demands of the general, and the preferability of the son's death. Both this and the Livy texts are to be taken in the context of moral, but esp. sexual, misbehavior; cf. Ogilvie n. *ad loc.* Liv. *Praef.* 9 *nec vitia nostra nec remedia.*

Oh my son, die resolutely! Do this at least as though you are my son! (*o fili, morere constanter! fac hoc saltem quasi meus filius!*; H. 31.7-8): the son had deserted; at least now he can redeem himself by facing death impassively, as his father had done in battle. Cf. Calp. 39 (H. 32.14-16): *O fili ... agnosce te filium viri fortis; vince felicter, id est peri fortiter!* See also Weber 24.

Declamation 37

The situation is a less complex variant of *DMin* 356 (*filius pro meretrice patris suam redimens*): *quidam luxurioso filio, amanti meretricem, dedit pecuniam ut sibi emeret eam meretricem quam ipse pater amabat. ille eam redemit quam ipse adulescens amabat. abdicatur.* The Master outlines the argument from the father's side; in Calp. only the son's side is given. See also *DMin* 344; for something of an inversion cf. *DMin* 330; esp. 330.11 & W. n. *ad loc.*, where he comments on the reversal of the normal situation normally found in New Comedy (here, a son has received money from his father to buy a courtesan, but instead uses it to support his needy mother who had been divorced by his father; for his efforts he is disinherited). Cf. W.'s comment *ad* 356 th.: "The theme is particularly reminiscent of New Comedy . . . ." Calp. 37 is likewise influenced by the plots and stock characters of New Comedy, primarily the foolish figure of a lecherous *senex* in love (esp. H. 31.17-18). See Duckworth 245-246: "When an old man falls in love, his role as husband and father is secondary to his laughable endeavors to win the favors of a young girl. There are few characters in Roman comedy more ridiculous than the aged lover . . . ." Duckworth then discusses the notable examples in Pl. *Cas.* & *Mer.* (246-247). Also comic in this decl. are the rivalry of father and son, a young man in love who schemes to obtain his sweetheart, the deception motif, and the buying of courtesans. On disinheritance see n. *ad* Calp. 18; on lavish spending of money as a cause of this (a secondary consideration here), see n. *ad* Calp. 30.

who bought the freedom of his mistress (*meretricis suae redemptor*; H. 31.9): *redemptor*, here in the sense "ransomer" acc. to *OLD* s.v. 3, which gives only this citation. However, it would seem to signify more simply "one who bought," with the conventional accessory meaning in comedy, "from slavery," here in the conventional case of a *meretrix*; cf. *OLD* s.v. *redimo* 5 b. Cf. H. 31.11: *redimeret . . . redemit*; also *DMin* 356 tit., th., 2; see Dingel 19 n. 53 (who cites also *MD* 6.20; 9.10-12).

I kept thinking . . . that my father was making fun of me (*rideri me . . . opinabar a patre, cum se quoque amare dicebat*; H. 31.13-14): the son expresses the foolishness of an old man in love from a young man's point of view; *rideri* helps to establish the comic atmosphere of the decl., discussed in n. *ad* Calp. 37.

he agrees that a mistress should be both an object of passion—and purchase (*et amandam meretricem consentit et emendam*; H. 31.15): the son's defense is that he is following his own father's example. Note the clever play of *amandam / emendam*, joined in the parallel *et . . . et* construction. The speaker may be also be playing on the verbs *emo* "to buy" and *emendo* "to correct, reform," the latter of which would probably have assumed an important role in the father's speech; cf. *DMin* 356.2 (*emendari*); 356.3 (*emendare*); cf. 356 th. (*emeret*).

you knew all along . . . . (*sciebas utique quid mallem*; H. 31.16): i.e., that the son would naturally prefer to buy his own girl, not the father's.

we have <un>equal torments in love (*<im>paria sunt nobis in amore tormenta*: H. 31.16-17): the restoration *<im>paria* (Weber 14; Dess.; cf. L., & H. *app.*; but Pith. prefers the nearly sim. *paria <non>*) is almost certainly on the mark, as the following clause, esp. the comparative degree *frigidior*, makes clear. The powerful word *tormentum* is not terribly frequent in amatory contexts; *OLD* s.v. *tormentum* 4 cites only Juv. 6.209; but see Pichon s.v. *tormenta*, citing Prop. 3.8.17; Ov. *Am.* 3.10.16 (see also Pichon s.v. *torqueri* & many refs. there cited; also *OLD* s.v. *torqueo* 5). Nevertheless, the metaphor of suffering in love as a form of torture does occur often enough in amatory contexts in decl. and elsewhere; cf. Calp. 33: *cruciaverit* (H. 29.13) & n. *ad loc.* Note esp. the treatment in *MD* 14 (a *meretrix* is charged with poisoning for administering a hate potion to an impecunious lover; the companion piece, *MD*, 15 is the defense of the *meretrix*) where *tormentum* does appear with some frequency: *MD* 14.10 (H. 298.17), 12 (3 times; H. 300.19; 301.3, 8); cf. 15.10 (H. 313.13), 11 (H. 315.1).

whether you like it or not (*velis nolis*; H. 31.17): the striking asyndeton is noted by Weber 22 (cf. 24), along with disjunctive coordination (not usually present in asyndeton), who cites as parallels Sen. *C.* 9.3.8 (*velim nolim*); Plin. *Pan.* 20.6 (*velint nolint*). Cf. Calp. 11 (H. 11.20): *vel velle . . . vel nolle*; 29 (H. 27.2-3): *velis enim nolis*; 36 (H. 31.4-5): *bene inimicus velit, pater nolit* (cf. n. *ad loc.*); (H.31.5): *non quidem velle, sed malle.*

more frigid (*frigidior*; H. 31.18): cf. *MD* 2.14 (H. 32.26); Ov. *Am.* 2.1.5; 2.7.9; see esp. Juv. 6.325-326: . . . *quibus incendi iam frigidus aevo / Laomedontiades et Nestoris hirnea possit* & Courtney's full n. *ad loc.* (in contrast to the passionate heat of youth), citing among oth-

ers esp. Juv. 6.369; Sen. *Dial.* 14.19.4; also Arist. *Rhet.* 2.13.1389b31; Verg. *G.* 3.97. L. posits a lacuna after this sentence, although it may be that the excerptor just stopped for one reason or another at this point (H. *app.*). Generally, however, the decll. in Calp. end with some sort of finality or reference to the future (esp. death wished or projected for one of the participants); cf. e.g. the surrounding pieces: Calp. 36, 38, 39, 40, 41.

Declamation 38

On charging a father with insanity see n. *ad* Calp. 8. The death penalty for a son unsuccessfully initiating such a suit has no parallel in law or decl. Such punishment does occur in unsuccessful prosecutions in capital cases; cf. *DMin* 313; 331; also W. (1984) 599 (under VI Actions and Penalties, 2 Unsuccessful accusers) & n. 4. See also *MD* 11 & Sussman n. 1 *ad loc.* (p. 252), citing Lanfranchi 560-569; Bonner 92. Because this would be an unparalleled usage, one could suspect that we may have a case here of *secundum legem <indemnatorum>*; i.e., the father had the first two sons executed (presumably for impiety) as punishment for lodging the complaint after they were unsuccessful; cf. Calp. 24 (H. 22.23-23.1): *lege indemnatorum interficiendum pater filium carnifici tradidit*; cf. Calp. 44 (H. 34.20-35.1); 45 (H. 35.12); 53 (H. 40.3). In this case we could translate the problematical sentence *in illis ... iudiciis gravior mihi fuit vindicta quam poena* (H. 32.2-3; cf. n. *ad loc.*) as follows: "in those ... proceedings my revenge (i.e., killing his sons according to the *lex indemnatorum*) was more burdensome to me than my punishment" (i.e., being declared incompetent under the *lex dementiae*). The theme does not make clear whether there were two separate proceedings initiated by one son at a time, or a single one in which they joined: the text is somewhat ambiguous: *in altero iudicio* (H. 32.2); *in illis iudiciis* (H. 32.2-3). On providing one's reasons for committing suicide (in full form, before the senate), see n. *ad* Calp. 20.

<inconsistent> (*<di>versum*; H. 32.1): as suggested by H. (1972) 69 (but *versum* [BC], *adversum* [B2 MN, Burm., L.]): "Since the point is the manifestation of inconsistence [*sic*] from the side of the son, who is not content with his father's life, nor with his death, I suggest *diversum*, which, moreover, gives a clausula without a hiatus." Cf. H. *app.*, comparing Cic. *Or.* 53: *quid potest esse tam diversum?* See Calp. 2 (H. 2.10): *diversa*; also Sen. *S.* 6.5; *MD* 16.1 (H. 319.12-13; contrasted with *adversa*); *OLD* s.v. *diversus* 6 d. Note that there is no parallel for the conjoining of *tam* & *versus* in decl.

the man whose life .... (*eius hic ab eo mors impeditur cuius in altero iudicio vita reprehenditur?*; H. 32.1-2): note the parallel and contrasting structure of the two clauses: *eius* / *cuius*; *hic* / *in altero iudicio*; *mors* / *vita*; *impeditur* / *reprehenditur*. Interpretation suggested by D.A. Russell, *per litt.*

in those previous legal proceedings . . . my vindication was a more painful burden for me than the punishment (*in illis... iudiciis gravior mihi fuit vindicta quam poena*; H. 32.2-3): cf. Calp. 23:

vindictam (H. 22.6, but wrongly cited in H.'s *index verborum* as 22.2), where it clearly means "vengeance." Here it is more difficult to interpret in a sentence dangling out of context; cf. the discussion in n. *ad* Calp. 38 for one possible interpretation. We must leave aside the entry in the *OLD* s.v. *vindicta*, which does not provide the range of meanings found in L&S, in particular II A: "means of asserting or defending, a vindication, protection, defence." I.e., the father's burden was more painful in opposing and defeating his sons when defending himself against the charge of mental incompetence than the punishment meted out to his sons—another case of rhetorical hyperbole, if we take this interpretation.

. . . whether as a remedy for an insane man or as a relief to a rational one (*mors a vobis dabitur sive dementi remedium sive sapienti solacium*; H. 32.3-4): for the contrast of *remedium* & *solacium* see *MD* 4.10 (H. 72.2); 5.1 (H. 85.10); cf. 14.4 (H. 291.14-15); also Sen. *Ep*. 78.3; *Nat*. 6.2.1. I.e., if he really is mentally incompetent, death will be a cure and therefore a blessing; if he is sane, it will be a relief, since otherwise he would win the case against his third son, and thereby be responsible for and witness to his death as well. Note the studied parallelism in the antithetical statement; anaphora of *sive*; contrast between *dementi* / *sapienti* and *remedium* / *solacium*; repeated terminations *-i*, *-ium*; allit. of *s*. On the sentiment that death may offer relief from suffering see *DMin* 335.1 & W. n. *ad loc*., with many parallels cited; e.g., *DMin* 377.9; *MD* 4.2 (H. 63.1- 3); but esp. 4.10 (H. 72.1-4): *faciamus potius de fine remedium, de necessitate solacium; exeamus sponte, consilio, pleni securitatis, gratias agentes.*

nature granted me three children; fate stole away two (*natura mihi tres liberos dedit, fortuna[que] duos sustulit*; H. 32.4-5): B & Francius (see Burm.) delete *-que*; H. (*app*.) concurs (but keeps it in the text). I agree and suggest as a possible parallel Calp. 39 (H. 32.14-15): *o fili, si tamen hoc nomen quod natura dedit, fortuna non abstulit.*

. . . one already too late in coming (*immo iam sera*; H. 32.6): cf. Calp. 39 (H. 32.12-13): *nunc coepit esse iam serum*; 48 (H. 37.6): *sero me . . . abdicare patet*; also *MD* 9.7 (H. 181.15); 12.24 (H. 258.19).

Declamation 39

This is not a judicial speech, but one of several deliberative ones in Calp.; here, before some unspecified assembly or equivalent of a senate; see n. *ad* Calp. 18. For a vaguely sim. theme see *DMin* 253 (also virtually a *suasoria*; see W. n. *ad* 253); also Russell 26 & n. 30, citing Liban. *Decl.* 42; Choricius *Or.* 35 (= *Decl.* 9). This case resembles Calp. 36 in its underlying assumption of a forced homosexual relationship (see n. *ad* Calp. 36), but more closely in general situation Calp. 45. On tyrants see n. *ad* Calp. 1. On the tyrant's demands here see Tabacco (1985) 49, 65. Tyrants were noted for their sexual appetites, both heterosexual (see W. n. *ad DMin* 282 th.) and homosexual (see Juv. 10.306-309 & Mayor's nn. *ad loc.* 10.307, 308, 309); Courtney n. *ad* Juv. 10.307-308; Tabacco (1985) 65, 87- 88, 118-123 (according to her the motives of the tyrant here were not wholly sexual; see esp. 119ff). The point of the war would be either to get the son back (if he had not already returned; see n. *ad* H. 32.9), or to avenge the tyrant's acts. The father, however, holds that since his son has (presumably) served the tyrant sexually, he has lost his honor and is no longer wanted as a son; for this reason, the son's only honorable way out is death (cf. in somewhat sim. circumstances Calp. 3 [H. 3.15-16 & n. *ad loc.*])—thus the final exhortation to face death bravely (H. 32.15-16; probably meaning suicide).

when the hero returned (*regresso eo*; H. 32.9): compressed and imprecise, but *eo* must mean the *vir fortis* who was *absentis*; cf. Burm. who suggests *regresso patre* "qui absens fuerat, cum tyrannus peteret filium." But Gronov. would emend to *egresso*, meaning right after the son departed the city to go to the tyrant (thus giving perhaps some point to the injunction to commit suicide; H. 32.14-16). However, the discussion of time and the inference that the son had already submitted to the tyrant's lust argue against that interpretation (H. 32.12-13). Alternatively, one could keep the text as is, undertanding *eo* = the son, surmising that he had escaped from or been released by the tyrant and now has returned home. But there is no reason or textual support for these additional complexities, as Burm. long ago recognized.

I don't know whether this war would have been a just one at its own proper time . . . . (*nescio an hoc bellum fuerit in tempore suo iustum; nunc certe coepit esse iam serum*; H. 32.11-13): cf. Cic. *Mil.* 85: *serae, sed iustae tamen et debitae poenae*. On the doctrine of *bellum iustum* see Cic. *Off.* 1.36. Note the parallel and antithetical structure: *fuerit* / *coepit esse*; *in tempore suo* / *iam*; *iustum* / *serum*. In this meaning our phrase *in tempore suo* is unusual in classical Latin since, when

the idea occurs, it is expressed by the plain abl., without the preposition *in*; cf. *OLD* s.v. *tempus* 2 b; however *in* occurs frequently with this expression in the Latin Vulgate (PHI CD ROM 1991; e.g., *Num.* 9.2.1; 9.5.1; 9.7.5; etc.). For *iam serum* cf. Calp. 38 (H. 32.6): *iam sera* & n. *ad loc.*

Oh my son . . . . (*o fili, si tamen hoc nomen quod natura dedit, fortuna non abstulit, agnosce te filium viri fortis; vince feliciter, id est peri fortiter!*; H. 32. 14-16): for further discussion see Tabacco (1985) 120. Cf. Calp. 36 (H. 31.7-8 & n. *ad loc.*): *O fili, morere constanter! fac hoc saltem quasi meus filius*; also Calp. 38 (H.32.4-5): *natura mihi tres liberos dedit, fortuna[que] duos sustulit.* Note the apostrophe to the absent son; allit. in the profusion of initial *f*'s & *v*'s, also the two initial *a*'s in a row; pairings of *natura / fortuna, dedit / abstulit, vince / peri, feliciter / fortiter.*

Declamation 40

The title (*morietur antequam nubat*) is identical to the sim. *DMin* 354; cf. Sen. *C.* 6.6 (with the more generic title *adultera venefica*). This expression ("will die before" or "die sooner than") is an ordinary phrase in the usage of common daily speech: *cotidiana consuetudine vulgi* (*DMin* 354.2; cf. 354 tit., th.) and is a little ambiguous (cf. W. n. *ad DMin* 335.16); it occurs three times (in slightly diff. form) in Calp. 40 (H. 32.17 [tit.], 19-20; 33.5- 6; cf. Calp. 15 [H. 15.24], 35 [H. 30.10-11], 43 [H. 34.16], 45 [H. 35.17]). For sim. see W. n. 2 *ad* Sen. *C.* 6.6 (I, 516), citing *RLM* 331.12ff; 476.34; Spengel 2.143.27ff; see also Sen. *C.* 2.4.1. Note that in Sen. *C.* 6.6 the expression is repeated five times in slightly diff. forms: *celerius morietur quam illi nubat* (H. 163.5-6, 28); *morietur . . . celerius quam nubat* (H. 163.10 & 11; cf. *DMin* 354.2); *morietur antequam nubat* (H. 163.22; cf. *DMin* 354.2), as compared to the simpler formation in the title and body of Calp. 40: *morietur antequam nubat* (Sen. *C.* 6.6 [H. 163.22]; *DMin* 354 tit., th.; cf. 335.16). On this theme see W. n. *ad DMin* 354, citing the parallel in Walz 8.403.14, and noting the relevance of Q. 5.10.47; 7.2.48 (cf. *RLM* 376.33ff) in this conjectural case; see also Russell 34 & n. 83. In *DMin* 354 th. there is additional information: the father overheard a handsome (*formoso*) young man speaking in secret with his wife. Suspecting an affair (made clearer in 354.1), he then decides to marry off his daughter to this same young man, obviously either to cause the mother to betray herself or to end the liaison altogether. In both Sen. & Calp. a servant girl is tortured (*torsit*: *C.* 6.6 [H. 163.7]; cf. the milder: *quaestionem cum de familia pater haberet* in our theme [H. 33.1]; see also Calp. 12 th. & n. *ad loc.*), and she then reveals the adulterous affair; in *DMin* 354 this element is lacking. On the charge of poisoning and on death occurring with doubtful symptoms suggesting either indigestion or poisoning see n. *ad* Calp. 12 (see also Calp. 35 [H. 30.6-7]).

before the appointed day the girl died (*intra diem puella obiit*; H. 32.21): note the typically abbreviated style in Calp. as compared to Sen. *C.* 6.6 th.: *decessit puella ante diem nuptiarum*; cf. sim. *DMin* 254 th.: *ante diem nuptiarum puella subito perit.*

"she will die before she gets married," and then she died (*"morietur ante quam nubat," et mortua est*; H. 33.5-6): by such a prediction, as we see below, the woman aroused suspicion when the girl died. On the expression see n. *ad* Calp. 40.

Oh what a wicked prognostication . . . . (*o impiam divinationem vel potius denuntiationem! o infelix puella!* H. 33.6-7): note the allit. & play (unique in Latin) on *divinationem* & *denuntiationem.* Cf. Sen. *C.* 6.6 (H. 163.17-18): *veneficium ne denuntiatum quidem credidi.* The powerful accusative of exclamation in the first interjection achieves a mournful effect through the sonority of repeated *m.* Note the following and equally pathetic exclamation and (probably) apostrophe (H.33.7): "*o infelix puella!*"; cf. sim in Calp. 51 (H. 38.23): *infelix puer.*

I was making your wedding arrangements . . . . (*ego tibi parabam nuptias, mater exequias*; H. 33.7-8): emphatic initial juxtaposition of personal pronouns (cf. below [H. 33.8] *ego te . . . .*); note also the asyndeton, with ellipsis, and the powerful contrast between father and mother. The expression is more pointed and more effective for its brevity than a sim. statement in Sen. (*C.* 6.6 [H. 163.18-20]): *versae sunt in exequias nuptiae mutatusque genialis lectus in funebrem, subiectae rogo felices faces.*

your fiancé found your resemblance to your mother attractive in you (*placuit in te sponso tuo similitudo materna*; H. 33.8): apostrophe to the dead daughter, as in the previous & following sentences (H. 33.7, 8- 9). The brevity and lack of context make this text a little difficult to interpret. Since in all three decl. versions adultery between the proposed son-in-law and the mother of the girl is assumed, I would take it as follows, given the sentence that immediately follows (on which see below): there was an affair between the young man and the girl's mother. The young man notices (or is encouraged to notice by the father; see below) that the girl resembles her mother—and is much younger; therefore, attracted to her, he asks the father for her hand. The mother becomes jealous and enraged when she hears that the young man has done so and then utters her threat; she is now a rival to her daughter; cf. Sen. *C.* 6.6 (H. 163.14): *filiae paelex.*

I confess it . . . . (*ego te, fateor, occidi, dum cum matre contendo*; H. 33.8-9): as above, the text is brief, out of context, and ambiguous. In light of the situation described for the previous sentence, the most likely explanation emerges if we take *contendo* in the relatively common meaning of "contend in words, dispute, argue" (*OLD* s.v. 8 e). By arguing with the mother and not giving in to her threat, he thus endangers her prospects of continuing the adulterous relationship, inflames her jealousy, and sets in motion the events leading to the daughter's death. We should note that only in the Calp. version does the young man initiate the marriage proposal; in Sen. *C.* 6.6 & *DMin* 354 the

father suggests the match (suspecting his adultery with the mother). The young man's suit, however it may have been occasioned here (see n. *ad* H. 33.8), causes her to become jealous, and she prefers to see her daughter dead rather than marry him (cf. *DMin* 354.1). As a sidelight to this, if we take *contendo* to mean "bring into comparison" (*OLD* s.v. 9), we could envision a situation where the adulterous relationship existed, then, suspecting this and wishing to test its truth, the father then extols the virtues of the girl (perhaps as a younger version of her mother) to the young man, who then directs his attention to the girl, resulting in the proposal of marriage, the mother's threat, and, finally, the girl's poisoning.

Declamation 41

On the law dealing with the options accorded raped women see n. *ad* Calp. 16; on offering one's self for death in place of another see n. *ad* Calp. 26. There is no close parallel to this situation in Sen. *C.*, *DMin*, or *MD*. Note the Greek locale in the use of *ephebus* (its only occurrence in decl.) for the more usual *adulescens* or *iuvenis*. The plot, too, seems reminsicent of Greek New Comedy. I have translated the various forms of *rapio* here with the more literal and general sense of "carry off, abduct" (H. 33.10 *rapta*; 33.11 *rapuit*; 33.12 *rapta*; 33.14 *rapui*; cf. *OLD* s.v. 1, 2), rather than the more common sense in decl. (as here in the summary of the law *raptarum lex*; H. 33.11) of "carry off (and violate), ravish" (*OLD* s.v. 4), since the text does not clarify what the (apparently) older man actually did to the girl, besides carry her off to his home and then hand her over to the youth who then had sex with her. Possibly it could be as follows: the youth and the girl are in love; by violating her in a staged rape he can get around a probable blocking figure (her father), since the law then allows her the option of marriage to a rapist (or, of course, his execution). Another man acts as an accessory by perfoming the abduction and bringing the girl to his house where the "rape" is consummated. Somehow, however, the plot has gone awry, since she, when produced before the magistrates (presumably by her father), exercises the death option and the accomplice asks to go undergo the death penalty instead of the youth, presumably because of his feelings of guilt or as a ruse to persuade the girl (or her father) to relent. Just what went wrong is not disclosed; but perhaps one of the following scenarios is possible (in order of their likelihood): (1) the girl is not aware of the plan; she is abducted and forced to submit against her will; in shame and rage she desires the youth's death (and is not averse to his friend's suicide); (2) the girl is aware of the plan and cooperates, but is forced by her father to seek the youth's death; (3) if we take *rapuit* (H. 33.11) to mean "carry off and violate" there was a double rape; but, since the girl could have exercised the death option for both, the fact that she does not now is a little puzzling, unless we take the situation to be as follows: the girl is reluctant to charge a double rape after the plan had gone off wrong when the first man abducted and then raped her; but since the impetus for the plot came from the youth, she blames him and desires his death, shrewdly (*callide*; H. 33.16) calculating that the friend will also commit suicide as a result of the youth's execution. (4) A reader of this manuscript has suggested a totally different interpretation of the text, one which I think less likely but intriguing: take the understood *quidem* (H.33.11; "a certain man") as the subject of *amabat*: "a certain man abducted a

young lady and handed her over to be sexually violated by a youth with whom *he* in love." I.e., the man is in love with the *ephebus* and gives him the girl as a present. The girl is aware of the deep attachment between the two men and realizes that by securing the death of the one who violated her, she will also gain the death of his lover, the one who abducted her. In this interpretation, one would have to assume that the man who gave her as a present would not feel jealous over the sexual relationship between the *ephebus* and the girl.

I myself abducted her . . . . (*ego, iudices, rapui, ego domum duxi, ego pariter inclusi, ego vim duobus feci*; H. 33.14-15): powerful quadruple anaphora of *ego*, focusing attention on his own culpability in an effort to exonerate the youth; also asyndeton, and rhyme of terminal *-i*. For another quadruple repetition of *ego* see *MD* 7.11; triple repetitions occur in Sen. *C*. 2.1.6; 7.1.3; 9.3.6, 7; *DMin* 290.5; *MD* 6.15; 7.13; double repetitions are common; Sen. *C*. 1.1.24; 1.7.10; 2.1.38; 7.5.3; 9.1.7; 9.6.14; *DMin* 257.2, 5; 279.3; 315.15; 320.6; 328.14; 336.13 (cf. 314.19).

it is better for me to die than to see this man die (*perire mihi satius est quam hunc videre pereuntem*; H. 33.15-16): strong emphasis on the idea of dying with the use of two forms of *pereo* in the first and last positions in the sentence. For sim. construction of *satius*, the infin., and *quam* see Sen. *C*. 1.2.23; 2.4.2; 7.6.7; *MD* 3.17.

you contrived this cunningly . . . . (*callide, puella, commenta es: unum petis ut duos pariter occidas*; H. 33.16-17): cf. in a case where a man rapes two women in a single night, the man is imagined as saying by way of excuse to one of them *dum te peto, in illam incidi* (Sen. *C*. 1.5.2). Note the allit. of *c* & *p*; also repetition of the previously occurring *pariter* (H.33.14). As is common in these overblown effusions of declaimers, the speaker here strongly suggests that if he is not allowed to serve as a substitute in death for his friend, he will commit suicide in any event; cf. e.g. Calp. 26 (H. 25.19-20) *si mihi non licet pro filio, peribo cum filio* (& n. *ad loc.*); also n. *ad* Calp. 37 (H. 31.18). This appears to be a separate extract and I have so marked it.

Declamation 42

The law regarding confession reflects Greek and Roman legal procedure. Roman magistrates could exercise some discretion in deciding whether or not a confession was genuine (see Bonner 103; cf. the sim. Sen. *C.* 8.1 & W. n. 2 *ad loc.* [II, 182]; also *DMin* 314 th. & W. n. *ad loc.*). On the appeal to tribunes in cases of unjust punishment see n. *ad* Calp. 17. *Sacrilegium* is usually meant in the sense of temple robbery; e.g., *DMin* 324; see esp. Sen. *C.* 8.1 (& W. n. 1 *ad loc.* [II, 182]); 8.2; Bonner 106. A grave offense, it was punishable originally by death in Attic and Roman law, but in the latter case the penalties became somewhat less severe; see Lanfranchi 503-504; Bonner 106; also n. *ad* Calp. 15 (H. 16.1-2). For other instances in this collection of people offering themselves up for punishment in a religious context see Calp. 19, 26, 44. Sen. *C.* 8.1 offers a very close parallel to Calp. 42; however the woman there has lost only two children (of an unspecified total) along with her husband. As in *DMin* 314 the critical points to argue would be the definition of a confession, and the conjectural point of whether or not she actually committed the *sacrilegium* (cf. W. n. *ad DMin* 314). In our short extracts the emphasis is placed on the tragic turn of events due to *fortuna* (H. 34.3), the son's standing as an interested party to appeal his mother's punishment before the tribunes (H. 34.4-5), the reliabilty of a confession given during the woman's emotional disturbance (H. 34.5-6), and a final appeal to pity (perhaps from the *peroratio*; H. 34.6-7). Thus, within the compass of just a few lines, the excerpts provide a good sampling of material for the interested student.

when she had tried to hang herself (*cum laqueum induisset*; H. 33.21-22): on hanging and other forms of suicide see n. *ad* Calp. 29 (H. 27.6-8).

magistrates (*magistratus*; H. 34.1): so L. & H.; *magistratum* (B2, MN, Burm.). If the acc. plu. *magistratus* is correct here, the number is apparently inconsistent with the sing. found in H. 33.19 (statement of the law: *magistratus de confesso sumat supplicium*) & H. 34.1 (*vult de illa supplicium sumere*); see H. *app. ad loc.*, citing a sim. inconsistency in Calp. 16 (H. 16.9-10; see also my n. *ad* Calp. 16 [*ad finem*]), but the lack of one in Calp. 51 (H. 38.12-13). H. suggests a possible palaeographical reason; otherwise it may be explained as a board of the magistrates which receives the judicial motion, with one member actually delegated to preside over the case. Similar confusion of sing. & plu. of *magistratus* occurs in the *DMin*; see W. n. *ad* 270.11. But note that in the very sim. Sen. *C.* 8.1 *magistratus* is sing. in both in-

stances where it occurs in the statement of the law and the th. I have supplied "a magistrate" as the subject of the following sentence for clarity.

. . . when unexpectedly (. . . *cum subito*; H. 34.3): L. (following MN) has *C. D.* at the end of the theme, and then begins the body of the decl. with a new full sent.: *subito fortuna* . . . . According to H. *cum* (C) is the correct restoration, occuring before *subito* in the decl. (and not the theme), where the excerptor or early copyist has omitted the first part of the sentence; cf. H. *app. ad loc.* This may have been through error—or design, since what we have here may well be the end of a long *topos* on the fickleness of fortune (cf. Bonner 61), which, being so conventional, the excerptor has omitted in order to focus on the novel personification of fortune envying its own gifts (a sim. personification also occurs in Sen. *C.* 8.1 [H. 228.20]).

the confession is voluntary—but suspect. one properly terms her confession of the crime . . . . (*confessio voluntaria suspecta est. confessionem sceleris appellas vocem doloris*; H. 34.5-6): my transl. follows Schult.'s suggestion: "voluntaria est; sed suspecta," in its particular sense in this context; however the statement could also be a broadly applicable *sententia*, as is perhaps also the following sentence which H. marks off as a new extract, although this sent. could just as well be an elaboration on the previous thought, repeating the initial word for emphasis. Note the parallel structure surrounding *appellas* of the double accus. objects, each followed by a gen.; also the rhyming *-em*, *-is* terminations. On the general content see *DMin* 272.5: *enuntiatio voluntatem habet et animum non coactum, confessio expressam dolore multo necessitatem* & W. n. *ad loc.*, citing *DMin* 314.6-7: *ego enim confessionem existimo qualemcumque contra se pronuntiationem; nec me scrutari lex iubet qua quis causa confessus sit. immo ea natura est omnis confessionis ut possit videri demens qui de se confitetur. furore impulsus est: alius ebrietate, alius errore, alius dolore, quidam quaestione. nemo contra se dicit nisi aliquo cogente.* Cf. Sen. *C.* 8.1 (H. 228.12-13 & esp. 23-25): *confessio conscientiae vox est* . . . .

the most generous exercise of your compassion . . . . (*misericordiae vestrae maximum munus est servare nolentem*; H. 34.6-7): the profusion of *m*'s has a mournful, pathetic effect.

Declamation 43

On *talio*, "retribution in kind," also in a case of inflicted blindness, see Calp. 9 & n. *ad loc.* The situation in *DMin* 297 provides a rather bizarre twist: a man blinds his mistress accidentally during a quarrel. She resorts to a trial under the law providing that a person who causes another's blindness should either suffer *talio*, or serve as the blind person's guide. On the law regarding rape see n. *ad* Calp. 16. In the declamation presented here the rapist asks for *talio*, the blinding of the girl, apparently in the hope that she will drop her request to have him executed.

demanded (*imperare*; H. 34.12): H. (*app.*) is troubled by this and suggests *impe<t>rare*, perhaps since this is the only occurrence of *impero* in Calp., while *impetro* occurs 7 times. However, *impero* in its legal sense of "to enjoin, order, prescribe" (*OLD* s.v. 2), or even in its more general meaning of "demand the production or payment of, order, levy" (*OLD* s.v. 1), fits the context and requires no change.

both of our sides possesses its own legal recourse . . . . (*habet quisque nostrum suam legem: rapta capitis, excaecatus oculorum*; H. 34.13-14): cf. Calp. 3 (H. 3.11; & n. *ad loc.*): . . . *suam legem habet.* Technically in a legal context as here *caput* means "life" as punishment or forfeit for committing a crime; cf. *OLD* s.v. 5. Of course it would be her head, more specifically her eyes, on which *talio* would be inflicted if the rapist has his way; if the girl wins, it would be his entire head; i.e., execution.

for what did you have to put up with, girlie? (*tu enim, puella, quid passa es*?; H. 34.14): I have translated *puella* with the English colloquial term "girlie" which has some of the Latin equivalent's sexual connotations in "girl" as well as "young woman as an object of sexual interest," "one's girl," or "slave girl" (cf. *OLD* s.v. *puella*). The verb *passa es* also has the common meaning of submitting to sexual intercourse (*OLD* s.v. *patior* 2 c).

. . . a customary loss in these <years> (*sollemne in his <annis> damnum*; H. 34.15): H. has supplied *<annis>*, meaning at that stage of her life; i.e., as a young woman. Pith. was puzzled by the bald *in his* of the MSS and suggested *inis*, while Gronov. thought the phrase referred to women in general (i.e., *in his feminis*); Schult. offered the somewhat sim. *in vobis*; *OLD* s.v. *sollemnis* 2 proposes *raptis* here. H.'s suggestion has the slight advantage of agreeing more specifically with the context of the following sentence (*erepta autem mihi lux est ante quam*

morerer; H. 34.16), which shows time relative to the previous action; i.e., "you lost your virginity at the normal time, while I lost my sight prematurely—before I actually died." Both losses are physical changes, but his is not a *sollemne . . . damnum*, which is exactly the contrast which the speaker wishes to emphasize.

Oh my eyes . . . . (*o oculi <quibus> ego primus adamavi!*; H. 34.17): *quos codd.*, Burm., L., H. On the relationship between eyes and love, esp. as active agents in the process, see Calp. 2 (H. 2.15-16); 16 (H. 16.21- 17.2); cf. nn. *ad* Calp. 16 (H. 17.2); 22 (H. 21.2) & discussion below. For *adamo* & *oculi* see *MD* 2.10 (H. 29.11-14): *oculi sunt, oculi, per quos paupertatem ferre non possumus, oculi tota nostra luxuria. hi nos in omnia cotidie vitia praecipitant: mirantur, adamant, concupiscunt*; cf. Cic. *Ver.* 2.4.101. If we read *quos*, the text means, "Oh eyes which I first fell passionately in love with," straining perhaps a bit the use of *primus* (cf. *OLD* s.v. 9), but acceptable. To defend his reading of the MSS, H. glosses it (*app.*): "nempe puella virgo fuerat"; i.e., referring thereby to the eyes of the girl, which he fell in love with first. (Note the reversed situation in Prop. 1.1.1.: *Cynthia prima suis miserum me cepit ocellis.*) These now he wants to visit with vengeance, since they caused him to fall in love with her, resulting in the rape, which will likewise result in his execution: *digna fortuna vos ulta est, ut qui me perdidistis, mecum periretis* (H. 34.17-18). The early commentators were troubled by the text here. Pith. suggests *per quos ego*; i.e., as it would seem, "Oh eyes, through which I first fell passionately in love . . . ." Schult. seems to agree, preferring the abl. of means and the more normal adverb *primum* for *primus*: *quibus ego primum adamavi* (although *primus* is acceptable Latin). Francius' *hos ego primus adamavi?* does not really help. It would seem to me that there are two major choices here. (1) If we retain the text as is: (a) the man fell in love with the girl's eyes first and then herself; her eyes in effect destroyed him, and therefore proper vengeance is that they "die" (i.e., she is blinded in accordance with his anticipated success in obtaining *talio*; D.A. Russell, *per litt.*) at the same time he dies; (b) he loves his own eyes first and foremost; they destroyed him, and when he is executed, they will die with him. (2) If we admit *per quos* or the easier *quibus*: "Oh my eyes, the agents through which I first fell in love"; i.e., his seeing of the girl caused him to fall passionately in love with her. This agrees with the declamatory convention that eyes are almost independent entities which cause their owners to fall in love: cf. Calp. 16 (H. 16.21-17.2): *omnes sciunt lacrimas ex uno misericordiae fonte manare, in amore vel maxime, nam isdem oculis quibus amatur et fletur* (note *quibus*—abl. of means); Calp. 22 (H. 21.2-3): *oculos*

mulieris incestos et infanda desideria nutrivi (cf. n. *ad loc.*); *MD* 1.6 (H. 7.10-13): *vitiis enim nostris in animum per oculos via est. . . . luxuria videntium crimen; aliis meretriculae amor inmodica poscentis: amor, cui renuntiant oculi.* The emendation *quibus* (or *per quos*) seems best to fit the sense of the passage in its declamatory contex, although the plain *quos* as explained above by Russell makes sense in the elegiac context of Prop. 1.1.1.

so that you who destroyed me will perish with me (*ut, qui me perdidistis, mecum periretis*; H. 34.18): note anaphora of *me*; allit. of *p*; terminal rhyme of *-tis*.

Declamation 44

The law allows fathers to execute their sons under *patria potestas*; see n. *ad* Calp. 24. For sim. situations see Calp. 19, 42; cf. *DMin* 326; 384; also on the response of oracles and plagues as recurring themes in decl. see Q. 2.10.5; W. n. *ad DMin* 323 th., citing also Petr. 1.3; Tac. *Dial.* 35.5 (& Gudeman's n. *ad loc. pestilentiae remedia*); Spengel 1.346.6; Walz 8.232.24; Lucan 5.109-111; V. Max. 1.8.21. On *infamis* ("suspected of misconduct") see Sen. *C.* 8.3; & esp. *MD* 18 & 19, both of which deal with a son who is suspected of sexual misconduct with his mother (both are titled *infamis in matrem*), and who is tortured to death by his father (ostensibly under the *lex indemnatorum*); cf. W. n. *ad loc. DMin* 335 tit. (also *TLL* s.v. *infamis* 1341.67ff); in a non-sexual sense see Calp. 52 & n. See in general Greenidge. The point is that by offering herself as a sacrifice she could prove her innocence if the plague ended (cf. *DMin* 384 th.; also 326 th.; see n. *ad* Calp. 26 on the general aspects of offering one's self as a sacrifice; cf. n. *ad* Calp. 42). In his speech, therefore, the father must emphasize her guilt to avoid her selection as the sacrifice since this would be fruitless. As elsewhere in this decl., he seeks to do so in an understated manner, only suggesting circuitously the sordid details of the case.

a man was suspected . . . . (*infamis erat in sororem virginem*; H. 34.20): so *codd.*, H.; Burm. & L. read *frater* (for *erat*; cf. L. *app.*); but as H. (*app.*) points out, cf. Calp. 49 (H. 37.17): *erat infamis in nurum.*

the brother and sister (*fratres*; H. 35.3): this meaning in the plural is infrequent but attested; cf. *OLD* s.v. *frater* 1 b, which cites this passage; also Tac. *Ann.* 12.4 (in a sim. context; cf. *Hist.* 4.65; 5.5; also Weber 19); Paul. *Dig.* 10.2.38. Cf. *filios* (for *filiam et filium*) in Calp. 12 (H. 12.11) & n. *ad loc.*; *DMin* 257 tit. (& W. n. *ad loc.*, citing Q. 9.3.63); Weber 18; Lehnert *JAW* 113 (1902) 110.

more than I would wish (*ultra meum votum*; H. 35.3): here *ultra* = *contra* acc. to Weber 21; however, the notion of "surpassing" or "more than" is perfectly acceptable here; cf. *OLD* s.v. *ultra* (2) 3. The phrase is unparalleled (PHI CD ROM 1991).

nobody takes a sacrificial victim . . . . (*nemo de polluto grege hostiam sumit*; H. 35.5-6): for sim. fig. use of *hostia* cf. Stat. *Theb.* 11.283 (see also Verg. *A.* 6.38). The girl is tainted because she is not a virgin; therefore she would not be a proper sacrifice. Again, her questionable chastity is indirectly alluded to.

who will kill this sacrificial victim—her father, a priest, or an executioner? (*quis hanc hostiam perimet; pater, sacerdos, an carnifex?*; H. 35.6): an emotional rhetorical question; cf. Calp. 26 (H. 25.14-15): *quis me feriet? carnifex innocentem, an commilito laureatum?*

to perish by that very sword which killed ker brother (*ipso illo gladio perire quo frater occisus est*; H. 35.7-8): i.e., she might prefer to commit suicide or be executed by her father (exercising his *patria potestas*) as her brother was. If she is killed as a sacrifice and the plague continues, the entire family will be dishonored, since that would be proof of her unchaste conduct. If the father kills her, or as he prefers, even if he does not, the case has ended with the execution of her brother.

Declamation 45

On executing children without a trial see n. *ad* Calp. 24; the actual law under which the case is tried is the charge of harming the interests of the state (*reus est laesae rei publicae*), on which see n. *ad* Calp. 5. The situation closely resembles Calp. 39 (see also n. *ad* 39); see also the sim. Calp. 36 (& n. *ad* 36), and less so, Liban. *Decl.* 42 & Choricius *Decl.* 9 (D.A. Russell, *per litt.*). On the tyrant's portrayal see Tabacco (1985) 49, 65, 119-123. The subject of homosexuality is again very delicately handled. As in Calp. 36 & 39 death is portrayed by the father as the only honorable exit for a son faced with sexual slavery. This decl. is omitted by all the MSS except C, where it lacks a tile; H. supplies a likely one for reference purposes: <*speciosus filius peremptus*>, to which I have added, again for the sake of clarity, <*a patre*>; cf. L.& H. *app. ad loc.*; Weber 19.

subject to the risk of war (*sub minis belli*; H. 35.11): for this fairly unusual meaning of *sub* see *OLD* s.v. 17 b, which cites this very passage (also Suet. *Tib.* 36; *Cal.* 48.2); *TLL* s.v. *minae* 992.36-37.

tyrants too often desire the impossible (*amplius reges impossibilia desiderant*; H. 35.14): *leges* (*codd.*, L., H.), *reges*: H. (1974) 59; see discussion below. H. (*app.*) would consider *leges'* in the acc., posits a question mark after *desiderant*, and makes the following sent. a separate extract, while L. inserts a comma after *desiderant* and ends a declarative sentence with a period after *manum*. See Weber 21, 22; he interprets *amplius* as = *saepe*, the only such occurrence in Latin according to him; but cf. *TLL* s.v. *amplus* 2014.39ff; *OLD* s.v. *amplius* 6. On *impossibilia* see Weber 19; Q. 3.8.25 uses *possibile & impossibile* to translate the Greek *to dunaton & adunaton*. H. (*app.*) compares the content here to *MD* 4.8 (H. 68.20-69.2)—a youth also in what seems to be an impossible situation for him, with suicide the only solution (for a parallel see Liv. 34.6.5: . . . *quas tempora aliqua desiderarunt leges*). D.A. Russell, *per litt*, finds it difficult to accept *amplius* = *saepe*. He prefers to take H.'s text as is; "do impossible circumstances require laws beyond this" (i.e., the *lex indemnatorum* is deficient, there is no question of *lasesa res publica*). An alternative to the MSS reading, one suggested by H. (1974) 59 (not mentioned in the *app.*), is chosen here. He accepts Weber's *amplius* = *saepe*, and suggests *reges* (nom.) for *leges*, observing: "It is not the laws but the tyrant who has wanted something impossible. . . . Why this thing was impossible is then explained: The young man would never have spared his life and gone to the tyrant." Following H.'s reasoning here, the next sent. should not be

a separate extract, since it amplifies the opening *sententia* from the father's point of view: he helped out his son, who had already expressed a desire to commit suicide.

I killed him when he already wanted to die . . . . (*interemi iam mori volentem et commodavi misero manum*; H. 35.14-15): note the multitude of *m*'s and allit.; also the many *o*'s which likewise help to provide the mournful tone of a father who felt forced for honor's sake to take the life of his son. The major point (repeated, it would seem in *ante quam moreretur*; H. 35.17—see n. *ad loc.*) is that the son himself wanted to commit suicide to save his honor; his father was just helping him out in attaining his wish. For *commodare manum* in sim. context see Vell. 2.70.4: *ut manum morituro commodaret sibi*; cf. Sen. *Her. O.* 1305; *Oed.* 1032; also *DMin* 297.12 (*OLD* s.v. *commodo* 2 b); also Sen. *C.* 1.4.10; 8.2 (H. 229.24); Sen. *Ben.* 3.30.2; *Dial.* 5.11.4; 5.12.2; *Ep.* 8.6; 70.8; Petr. 101.2; Plin. *Pan.* 71.6

I did what I was allowed to do . . . . (*feci quod licebat: occidi filium. sed ingens pater praemium retuli: occisus est ante quam moreretur*; H. 35.15-17): I have changed H.'s semicolon after *filium* to a period (cf. L.): the second sentence parallels and amplifies the first, and the punctuation must reflect that. The unqualified *moreretur* has troubled scholars (cf. Calp. 43 [H. 34.16]). Klotz (*apud* L. *app.*) suggests *antequam <pudore> moreretur*, meaning, apparently, the son would leave, be sexually defiled, then commit suicide. H. (1972) 69 suggested in a more specific vein (not mentioned in his *app.*) *<te>meraretur* for *moreretur* ("before he could be sexually violated") but later (*app.*) suggests transposing *occisus est, antequam* [sc. *sponte*] *moreretur* to precede *feci quod licebat*; this would improve the logic and connect well to the following sentence, acc. to L.: "He was killed before he could commit suicide; I did what I was allowed to do; I killed my son; but as his father I rendered him a very great reward." Although these alternatives are attractive, I have followed the simplest course, understanding *sponte* (or sim.; though *<pudore>* is tempting) as implicit in the text as received (i.e., *moreretur* = die by one's own hand); this makes for a pointed contrast between the bracketing *occidi* & *occisus est.* The father acted before the son had to do something (commit suicide) which would be difficult for one of his tender years (cf. Calp. 24 [H. 23.5- 7]: *mori iussus adulescens in primis adhuc annis, quo tempore et vita carissima est et mors acerba* . . . .); i.e., "I lent the poor boy a hand," *commodavi misero manum* (H. 35.15).

the person perishes, but his honor lives on (*perit homo, sed pudor vivit*; H. 35.17): chiasmus & antithesis; note the repetition of initial *p* (cf. H. 35.16 just before: *pater praemium*). Cf. Sen. *C.* 8.2 (H. 229.21): *superest homo, sed artifex periit.*

Declamation 46

On the laws see nn. *ad* Calp. 16 (rape); *ad* Calp. 24 (executing one's children without a trial). This is an odd case in which the rapist-father is apparently attempting to bargain his way out of the death penalty by threatening to exercise his option as a *pater familias* to execute his son. Thus at least in part the full case would hinge on the definition of father in the biological sense vs. father in the full Roman legal sense.

< . . . > unless perhaps she was annoyed that she herself did not condemn him (*nisi forte moleste tulit quod + et non [et] + hunc ipsa damnavit*; H. 36.4): i.e., the son, probably through exposure or abortion; cf. below (H. 36.6-7): *si perseverat in mea poena, hunc mater occidet.* This is a troubled passage: "locus dubius et fort. lacuna mutilatus" (H. *app.*; cf. Schult.). I have followed H. (1972) 69-70 (cf. *app.*) in positing a lacuna at the beginning of this sentence, which otherwise would lack a clear subject, to say nothing of an apodosis. I have also dispensed with the second *et* (cf. Burm., L., H. *app.*).

I had already settled the matter . . . . (*iam cum illo meo errore vel fato voluntaria profectione transegeram; hic me, iudices, hic puer prodidit*; H. 36.5-6): i.e., he puts the best color on his flight here by terming it in effect an exile (cf. *post exilium*; H. 36.8) and thereby a self-imposed punishment. However, as it would seem that he is saying, the news of his son's birth brought him back, and now he intends to set things right and have a legal family. But his return for this reason also made him liable to the death option. Read *fato* (Pith., Meister 236; H. [1972] 70 & *app.*) for *facto* (*codd.*; L.).

. . . the mother will kill this child (*si perseverat in mea poena, hunc mater occidet*; H. 36.7): a little vague. Perhaps the speaker foresees that after successfully obtaining the death of the father, she will erase the last memory of his crime by exposing the child. Cf. V. Max. 2.7.8: *Papirius in exigenda poena perseveravit.* Or, conceivably, if she does not relent in her insistence on the death penalty, he will not relent in his intent to kill the son. Thus in his view the mother becomes responsible for the death (see also n. *ad* H. 36.11-12).

. . . after my son [was born] (*dicere me raptorem nemo debebat post intervallum, post exilium, post meum filium*; H. 36.7-8): regarding the last *post*, we find *postremo* (BC) and *post reum* (B2 MN); these do not fit. L. suggested *postremo <post> filium*, but this ruins the fine asyndeton, although it makes sense. H. (1972) 70 (cf. *app.*) suggests, and I concur, *post meum filium* (sc. *natum*), which makes eminent good

sense here and connects nicely with the following sentence. Cf. *DMin* 330.7: *"ita ego adultera hoc tempore, in hac potissimum aetate, post filium, et post filium iuvenem?"* See also W. n. *ad loc.*, citing esp. 335.6; *MD* 2.7 (H. 26.16; cf. 26.19). By his return the man displayed his good intentions, his penitence, and his intent to set things right by acknowledging the son and marrying the mother, yet possibly exposing himself to execution. Note the striking anaphora of *post* and asyndeton (if we accept H.'s text); for sim. repetition and / or anaphora of *post* see Calp. 15 (H. 15.22); Sen. *C.* 7.8.2; 8.5 (H. 231.21); 10.3.12; *S.* 1.1; *DMin* 250.9; 330.7 (quoted above); *MD* 9.18 (H. 193.3-4).

the opposition says, "he is not . . . marriage." (*"non est," inquit, "filius tuus; nuptiis enim sollemnibus non est natus."*; H. 36.9-10): H.'s punctuation makes for better continuity since the entire statement is best read as said by the mother (or her advocate). L. ends the quotation with *tuus* and begins a new sent. with *nuptiis*. Cf. H. (1972) 70 & *app.*

whose (*cuius*; H. 36.10): so H. for *civis* Burm., L., *codd.* (except C: *cives*); this makes more sense in the context. H. had previously suggested *quivis* ([1972] 70) which would then, when read with *nisi* . . . . give the rhetorical question: "can not anyone, then, be a father, without celebrating his marriage in due order?" (ibid.).

unless a man lights the marriage torches and sings the off- color marriage songs ... ? (*nisi faces accenderit et fescennina cecinerit, pater esse non poterit?*; H. 36.10): the *fescennina* were ribald songs sung at weddings; Paul. *Fest.* p. 85 M; cf. Catul. 61.120; Hor. *Ep.* 2.1.145; Liv. 7.2.7; Sen. *C.* 7.6.12; Sen. *Med.* 113. Note the triple rhyming-*erit* terminations, allit. of *f, p.*

you are an incredibly heartless woman . . . . (*perquam es inhumana: non vis esse patrem qui te fecerit matrem!*; H. 36.11-12): cf. in another rape case (Calp. 51; H. 38.13-14) where two women, raped by the same man, wanted to exercise the conflicting options: *magistratus humaniorem sententiam secuti sunt*; i.e., the magistrates let the man marry one of the women. The statement here is somewhat ironic—or ingenious, since it is the father who wants to execute the son. Of course, this is a ploy to get the woman to relent and marry him; but if she doesn't then she is in his view responsible for the boy's death; see H. 36.6-7 & n. *ad loc.* Perhaps also we are dealing here with a question of biological fatherhood vs. the man's legal position as *pater familias*. This would allow him to execute the son; but does he have such a status lacking the formal marriage ceremony? The woman's advocate

would of course say not. If the woman chooses marriage, she will save the boy's life—and the rapist's; she will be *humana*. If she doesn't, she will be responsible for two deaths, as here—*perquam . . . inhumana* (cf. Calp. 53 [H. 40.7]: *perquam indignum est*).

Declamation 47

This is a unique type of speech in Calp. since it is neither a *controversia*, nor really a *suasoria* (Calp. 18, 50; cf. 19), but rather an electoral speech. The contention for approval between an orator and a military man also occurs in a different context in Calp. 32; see n. *ad loc.* The title (*vir fortis et orator*) is lacking in BC, and may have been reconstructed from the argument in MN; see H. *app.*

+ fellow citizens . . . . (+ *<num> vestra iudicia plus ad cuiusque, + <cives>, proficiunt merita privata quam publica?*; H. 36.15-16): H.'s text reads: + *quam vestra iudicia plus ad cuiusque* + *iudices* . . . .; the passage is obviously troubled: "caput declamationis laborat" (Schult.). I agree with H. (1972) 70 where he originally suggested *num* for *quam* (*codd.*, L.; *quanto* Gronov.); thus the sentence would be interrogative. Following Schult., H. (ibid.) also admitted *cives* in place of *iudices* since the context is electoral, not judicial (*Quirites* could also be possible). It is easy to see how a scribe could fall into *iudices* shortly after *iudicia* (in its generalized meaning here), and after he has seen *iudices* so many times previously in this text. The expression *merita privata* ("individual merits") here refers to the personal bravery of a war hero, while the *publica* ("public merits") encompass the orator's full record of political, public, and judicial activities in the civilian sphere and thus benefit the entire state as a whole; cf. H. (1972) 70.

you do not know how to frame a request (*rogare non nosti*; H. 36.17): his opponent, a soldier, is used to giving commands, not making polite and skilfully worded requests of an assembly to act upon legislation. But, as the next sentence makes plain in contrast, this is precisely what his profession as an *orator* is all about.

it is our function to plead and persuade by pleading . . . . (*orare et exorare nostrum est qui hinc etiam nomen accepimus*; H. 36.17- 18): i.e., he is an *orator*; note the play on *orare* & *exorare.* On the distinction between the two see Serv. *A.* 3.370: *nam "orare" est petere, "exorare" est impetrare*; cf. Fest. *Verb.* 182: *orator venio, facite exorator sim.* See also Sen. *C.* 9.2.21; the play on the two words is frequent in comedy: Pl. *Cas.* 42-44, 705; *Cist.* 302-303; *Mil.* 1072; *Mos.* 1175-1176; *Rud.* 1218-1219; Ter, *An.* 592; *Ph.* 515.

Declamation 48

The two applicable laws here are left unstated. (1) The first concerns the death penalty for adulterers caught in the act, a law which appears stated in summary form in Calp. 49: *adulterum cum adultera liceat occidere*; it appears more fully in Sen. *C.* 1.4 & 9.1: *adulterum cum adultera qui deprehenderit, dum utrumque corpus interficiat, sine fraude sit*; cf. Calp. 11; 23; 31 (& nn. *ad loc.*). The full law is worded broadly; usually only the husband is allowed to kill the pair (for a special case, a son punishing a mother caught in adultery, cf. Calp. 23 & n.; also 31 [including sisters]). In the early Republic a husband could kill both offenders, but later they both had to be killed simultaneously, on the scene. The *Lex Julia de Adulteriis* (*ca.* 16 BC) seems to have superseded previous adultery legislation and it appears that henceforth the husband was deprived of his previous rights, except to kill the male involved if he was of low status; the father of the woman could exercise the death penalty only under special circumstances. In any event, the situation described in this case could only occur before the *Lex Julia.* See also Simonds 83; Lanfranchi 439-442; Bonner 119-121; W. n. 3 *ad loc.* Sen. *C.* 1.4 (I, 104); W. (1984) 598 (entry under, III Marriage, Adultery and Rape, 2 Adultery); Migliario 538-543 (esp. 539, 541-542). Notably full is Mayor's n. *ad* Juv. 10.315-316. (2) On the second law, *abdicatio*, see n. *ad* Calp. 18. In our case the father is defending his exercise of *abdicatio* against his son.

The theme closely resembles *DMin* 291 (cf. 275, 286; also, Sen. *C.* 6.7). In our case the husband kills both his brother and the wife; in *DMin* 291 the theme states that just the wife was killed, but later we find that the brother was also (291.4; cf. 291.8). W. n. *ad DMin* 291 (cf. n. 1 *ad* Sen. *C.* 6.7 [I, 520]) cites the parallel of Antiochus and Stratonice (V. Max. 5.7 *ext.* 1; Lucian *Syr. dea* 17-18); to which add Plut. *Demetr.* 28; cf. Simonds 67.

<A father> (*<pater>*; H. 36.20): supplied by H; cf. (1972) 70 & *app.* Although these extracts are greatly abbreviated, and although the context is clear, it does not seem that the important subject of this sent. would be left out (for a contrary view in a somewhat sim. sit., cf. W. n. *ad DMin* 309 th.). H. attributes the probable cause to a scribal error before copying *alteri.*

the other became seriously ill (*alter incidit in adversam valetudinem*; H. 36.20-37.1): cf. Suet. *Cal.* 14.2: *ut vero in adversam valetudinem incidit*; also Curt. *Alex.* 3.7.1; 9.6.4; Sen. *Ep.* 66.38. The

phrase *adversa valetudo* is notably late Tacitean; *Ann.* 2.69 (twice); 3.71; 12.66; 13.35.

the doctors said that he was suffering from a mental illness (*medici dixerunt animi esse languorem*; H. 37.1): cf. *DMin* 291 th: *et dicentibus medicis animi esse languorem*; *MD* 14.10 (H. 298.14-16); also for mental disturbance in an amatory context see Apul. *Met.* 4.27; 10.2; cf. Catul. 63.37ff; in the specialized meaning of mental illness or insanity see Just. *Dig.* 41.3.44.6: *languor animi.*

too late (*sero*; H. 37.6): note the emphatic initial position of the adv.; the adj. form occurs in Calp. 38 (H. 32.6) & 39 (H. 32.13).

honorable gentlemen of the jury (*sanctissimi iudices*; H. 37.6): cf. n. *ad* Calp. 13 (H.13.7).

. . . I am forced to make an excuse (. . . *excusare compellar*; H. 37.7-8): the father blames himself; cf. *DMin* 291.8 & W. n. *ad loc.*

the man who executes his own brother . . . . (*qui capitis poenas a suo fratre pro uxore dilecta petit, quid ipse meruerit, ostendit*; H. 37.8-9): i.e., the other brother deserved death in the first place for falling in love with the woman; cf. *DMin* 291.1-3.

by their adulterous affair . . . (*quantum tibi nuptiarum cessione praestiterit, adulterio probaverunt*; H. 37.11-12): cf. *DMin* 291.5 (cf. W. n. *ad loc.*): *nunc intellego, iuvenis, quantum mihi praestiteris: amabas.* H. suggests *praestiteri<n>t*, in view of the subsequent *probaverunt*; but it was the previously married brother, not his wife, who made the concession, thus the change is neither necessary nor warranted; cf. *petit pater a filio ut matrimonio cederet* (H. 37.2-3).

for you they left nights free and whole . . . . (*tibi liberas et perpetes noctes, sibi furtiva commercia et amorum pericula reliquerunt*; H. 37.12-13): an ingenious and glib *color.* The cuckolded son was better off because he spent his nights peacefully, free, as it would seem, from interruption caused by the sexual demands of his wife. The adulterous son was the loser because of these same demands as well as the dangers of carrying on a clandestine love affair. Cf. Pl. *Am.* 732: *quievi in navi noctem perpetem*; *Truc.* 278: *cumque ea noctem in stramentis pernoctare perpetem* (also Pacuv. *Trag.* 188, 208). The use of *perpes* (= *perpetuus*) is an apparent example of an old word revived as part of the archaizing trend in the early Empire, and esp. the 2nd C. AD. (e.g., Apul. *Fl.* 17; *Soc.* 1; *Apol.* 73; *Met.* 9.11; Maur. 2450; see *OLD* s.v. & Weber 22). On *furtiva commercia* cf. *DMin* 291.6 (also W. n. *ad loc.*):

coibant ergo furtim; for *commercium* in a sexual usage see Pl. *Truc.* 94; V. Max. 6.1.10; 8.2.2 (*TLL* s.v. 1875.45); in a double meaning cf. Juv. 2.166. Note the balanced (and emphatic) initial placement of *sibi* . . . *tibi*; also asyndeton and ellipsis.

forgive the lovers.... (*ignosce amantibus, si vere amasti*; H. 37.13-14): cf. *DMin* 291.3 (& W. n. *ad loc.*): . . . *tu qui et ipse amasti, nonne tibi cum deprehendisses imaginem cernere visus es tui casus?* Note also the sententious nature of the the thought and the play on *amare*.

Declamation 49

For the title, *infamis in nurum*, see the vaguely sim. Sen. *C.* 8.3 (& Simonds' discussion 79); cf. *DMin* 335 (*infamis in novercam vulneratus*); *MD* 18 & 19 (*infamis in matrem* I, II); *RLM* 85.24-27. For a more developed situation see Juv. 1.77: *quem patitur dormire nurus corruptor avarae*, in which *corruptor* would refer to bribery (cf. Juv. 6.541) or seduction (Juv. 4.8; 6.233; 10.304); cf. Catul. 67; Courtney n. *ad* Juv. 1.77. On *infamis* & *infamia* see n. *ad* Calp. 44; for a different type see nn. *ad* Calp. 52 & *ad* H. 39.12. In general, on the law regarding the execution of adulterers see n. *ad* Calp. 48. The declamatory law allowing a defendant for murder to choose his advocate (*reus caedis advocatum quem volet, eligat*) is found only here; a more inclusive provision is found in *DMin* 333: *patronum optare liceat*, on which see W. (1984) 599 (entry under VI Actions and Penalties, 1 Procedure) where he cites Sprenger 216; Sherwin-White, nn. *ad* Plin. *Ep.* 3.4.2-3. Although the terms *advocatus* & *patronus* have very specific meanings and differences between them in Roman legal procedure, the declaimers use them rather imprecisely; cf. Lanfranchi 539 & n. 4. In this situation the husband is being prosecuted (presumably by his former father-in-law, or his wife's nearest male relative) because he did not kill both parties to the adultery, as would be required under the terms of the full statute: *adulterum cum adultera qui deprehenderit dum utrumque corpus interficiat, sine fraude sit* (and not the abbreviated one found in this particular theme: *adulterum cum adultera liceat occidere*; see n. ad Calp. 48). The defendant does not want to defend himself and desires an advocate, an accepted practice, perhaps because he was a son still under *patria potestas*, in a case where his father might possibly involved (cf. Bonner 52 & n. 7); also the general unpleasantness of the situation would make it difficult for him to speak freely (cf. *DMin* 260.1-3; Lanfranchi 539- 540; Bonner 52-53). Of course at least initially he may have wanted to embarrass his father by the very act of asking for him as an advocate, and perhaps squelch the forthcoming full legal case by strongly planting the notion that the reason he did not also kill the male adulterer was that he was his father (and he could thereby be liable for prosecution in a more serious case; i.e., parricide). The procedure involved in this case would of course precede the actual murder trial; again, see Sherwin-White, nn. *ad* Plin. *Ep.* 3.4.2-3; also n. *ad* Calp. 22.

my accuser charges me . . . . (*accusator obicit quod adultero pepercerim; pater dolet quod nurum eius occiderim*; H. 37.20-21): the declaimer seems to be suggesting obliquely his father's adultery with

his wife through a play on the meanings of *doleo*, which with a *quod* clause usually means, "to feel grief or pain in respect of, be grieved at" (*OLD* s.v. 3; cf. *TLL* s.v. 1827.31ff); i.e., he feels the normal grief at the loss of his daughter-in-law, a family member, and is annoyed at the circumstances under which the son executed her. However he is also "rankled" (*OLD* s.v. 4), i.e., suffering, because of the loss of his paramour. The construction is rare in decl.; cf. *MD* 3.2 (H. 44.6-7); 6.10 (H. 121.12-13). Note the closely parallel structure of the sent., repetition of the *-erim* at the end of each *quod* clause, asyndeton.

the adulterer preferred . . . . (*adulter occidi maluit quam videri*; H. 37.21): a terse sentence; when he discovered the adultery in progress, the husband went first for the wife and killed her. Apparently in the meanwhile, at the cost of some time and risk, the man covered his head (cf. *capite velato*; H. 37.18), and then was let go, or at least not impeded from escaping. The emphasis is on the adulterer's fear of having his identity discovered; i.e., it must have been someone who would have been greatly embarrassed—his father.

he is crucified by his conscience . . . . (*cruciatur conscientia, pudore torquetur*; H. 37.22-23): cf. Calp. 35 (H. 30.15); *MD* 4.9 (H. 70.11). Note the chiasmus, allit. of *c*, asyndeton, repetition of terminal *-tur*, and the powerful imagery of torture. For another figurative use of *crucior*, also contrasted with its literal meaning (again with allit.) see Calp. 33 (H. 29.12-13): *miror quidem a muliere tam comi crucis nomen auditum, quae nullum umquam nisi amore cruciaverit* & n. *ad loc.*

. . . his bad character . . . (*inveniet illum postremo vel fama*; H. 37.23-24): cf. Schult.: "igitur cum poenam suam vel iam invenerit adulter vel inventurus sit, ego accusandus caedis non sum, quamvis eum una cum uxore deprehensum non interemerim" ("therefore since the adulterer will either already have found his own punishment or is going to find it, I ought not to be accused of murder, even though I did not kill him when he was caught in the act with my wife"); i.e., the adulterer's bad character is a constant—he will eventually again do something evil because of it, and will also eventually suffer punishment. Since the adulterer is already being punished by his bad conscience and shame, and also will ultimately be punished for another crime, the husband did not really let him off. Cf. *MD* 19.3 (H. 374.9-10): *iamiam non evitabit fama nec patrem, iam meis auribus nemo parcebat.*

Declamation 50

The title (*pauper imperator imperium recusat*) is inconsistent with the facts of the case as laid out in the theme: the poor man is not yet *imperator* (this is the very matter before the assembly), and its use as an appositive to *pauper* is clumsy, as is its apposition to *imperium* (as I have translated it). H. (*app.*) also observes that normally in such a title one would expect the participial form of the verb, here the present (i.e., *recusans*); e.g., Calp. 24: *indemnatus carnificem recusans* (cf. Calp. 14, 16, 27, 29, 34, 51). The theme has some similarities to the very complex *DMin* 337 (which in turn shares much with *MD* 11). On the rich man vs. poor man opposition see n. *ad* Calp. 6 (H. 6.13). The speech here is deliberative, addressed to an assembly, on whether to pass the proposed bill or not; the term for such proposed legislation, *rogatio*, is fairly typical in such a context; cf. *OLD* s.v. 3, citing e.g., Gal. *Iur.* 17; Caes. *Civ.* 3.1.4; Liv. 42.30.11; Q. 10.5.13; Gell. 10.20.9; see also *DMin* 253 tit., th.; 339 th. (also W.'s nn. *ad loc.*)

father, you have a magnificent consolation . . . . (*habes, pater, grande solacium: reliquisti superstitem legem*; H. 38.7): L. (following BMN) has *pauper*, while H. prefers C's *pater*, which surely must be the right choice (unless *reliquisti* is read *relinques* or *relinqueris*); note *solacium*, which must also refer to the dead man here. As H. has very effectively argued (1974) 63: "The dead father has left a law behind him, that will now perhaps kill his enemy. *reliquisti* indicates that the speaker is referring to his dead father, for if he would have been referring to the future, when the poor man was perhaps to die, one would have expected *reliqueris*, and the thought implied would have been rather farfetched. The confusion is probably due to perseveration [*sic*] from the argumentum, where *pauper* occurs four times, but it turns up again at 39,1 [L., = Calp. 40; H. 40.4]: *pauperem* C, correctly; *patrem* B." I.e., those who prefer *pauper* [after changing *reliquisti*; cf. Schult.] would have to argue that the law would normally have been named after its proposer / author; but then go on to assume that after the poor man had taken the command, he would then be routed three times, crucified thereafter, with the law, already named after him, as his surviving legacy. This brings us to *superstitem legem*; the poor man had the law passed in the first place, aimed against the rich man. Now the tables will be turned; the rich man's son has proposed giving the command to the poor man. If he fails, he too will be crucified and the law which punished him will also punish the poor man, a *grande solacium* and his legacy (*superstitem*) to the poor man, who will likewise die because of it. The latter term is used in its poetic and fig. sense; cf.

OLD s.v. *superstes* 3 c, d. Note, too, Ovid's use: *elegi / . . . post mea mansurum fata superstes opus* (*Am.* 3.15.19-20; cf. *Tr.* 3.7.50). Cf. W.'s full n. *ad DMin* 335.4 for its more literal sense, a son surviving a father, and esp. the bad luck attending this.

forward to the fray, you maker of laws; exchange your pen for the sword, your toga for the corselet (*procede, legumlator, ad bellum; muta stilum gladio, lorica togam*; H. 38.8-9): note the chiasmus (with asynd.) of the last four words. The *stilus* is, of course, used for writing on a wax tablet, here in the figurative and literary meaning similar to the Engl. "pen" as in a similar context, "the pen is mightier than the sword" (*OLD* s.v. *stilus* 4); cf. Cic. *Mur.* 30: *cedat . . . forum castris, otium militiae, stilus gladio, umbra soli.* So also *toga* as the garment emblematic of peace (cf. *OLD* s.v. 4); e.g., Cic. *Pis.* 73: *quod pacis est insigne et otii toga*; cf. V. Max. 8.15.1. The sentence would certainly call to mind Cic.'s famous *cedant arma togae* (e.g., *Cons.* fr. 8; *Phil.* 2.20; *Pis.* 72, 73; *Off.* 1.77). For *lorica* symbolizing war, see *TLL* s.v. 1677.6ff; esp. Tert. *Pall.* 5.5: *plus togae laesere rem publicam quam loricae*; Claud. 8.16: *nec te . . . pudeat, Gradive, . . . Latia . . . micantem loricam mutare toga* (cf. Claud. 22.367, etc.); also Hor. *Carm.* 1.29.14-15: *libros Panaeti, Socraticam et domum / mutare loricis Hiberis*; cf. Sen. *C.* 10.2.2 (H. 296.24-25); Fro. *Ver.* 2. p. 146 (128N). The speaker is denigrating the man skilled in the arts of peace, but inexperienced in war (as made plainer in *DMin* 337 th.: *pauper, qui et disertus erat*), a *topos*; cf. n. *ad* Calp. 32. On *legumlator* cf. Calp. 26 (H. 25.1-2): *qui primus hanc condidit legem*; on praise for such (also a *topos*) see W. n. *ad DMin* 308.3; cf. *DMin* 249.3; 334.3 (as two words); as one, 274.11; 313.12.

. . . we wore out the enemy (*iam fortunae satis fecimus, et hostes, vel dum vincimur, fatigavimus*; H. 38.9-10): cf. *DMin* 271.14: *ante omnia adversarius iam fatigatus est: cogita quotiens pugnaverit.* See also W. n. *ad loc.*, who cites Sen. *C.* 8.5 (= H. 231.31): *tu fregisti bellum, ego sustuli*; in contrast see Sen. *C.* 1.8.9. Note allit. of *f* & *v*; repetition of *-imus* at the end of two successive clauses.

. . . into victory—one that belongs to someone else (*in victoriam paene succedis alienam*; H. 38.10): Schult. compares Flor. *Epit.* 1.32: *sed—fata rerum—cum Metellus dimicasset, ad victoriam Mummius venit.* The *alienam* is cleverly placed at the end of the sent. as a jarring reversal, an unexpected modifier to *victoriam* in the then interrupted prepositional phrase. If the poor man should win a victory when he takes command, it would in reality belong to the speaker's father, who,

like Fabius in the Second Punic War, though not defeating Hannibal, had worn him out for another eventually to finish off. The son is of course ironically exhorting the poor man to take the command with the argument that it would be *facile*. Here *succedis* suggests a fresh force sent up to the front to replace previously fighting troops, now tired: e.g. Caes. *Gall.* 3.4.3: *defessi proelio excedebant, alii integris viribus succedebant*; cf. *OLD* s.v. *succedo* 4 a, b.

Declamation 51

On the law regarding rape see n. *ad* Calp. 16. Underlying much of the discussion here is the original situation of conflicting laws and the two opposite sentences requested, since the two women were raped by the same man; cf. Sen. *C.* 1.5 (two rapes by the same man, in the same night!). On this conflict of laws see W. n. 4 *ad* Sen. *C.* 1.5 (I, 121); also *C.* 1.5.3; *RLM* 383.30-35; n. *ad* Calp. 51 (H. 38.13-14); Dingel 139 & n. 340, 140. But the actual court case here is initiated by the woman under the law of maltreatment: *reus est uxori malae tractationis*, on which see Lanfranchi 235-239; Bonner 94-95; W. n. 2 *ad* Sen. *C.* 3.7 (I, 412); Sussman n. 1 *ad MD* 8 (p. 250). This procedure has no counterpart in Roman law (although it may be based on Greek statutes), but was quite popular in declamation (Bonner 94), perhaps because as Q. observes (7.4.11) it closely parallels cases in which a divorced wife reclaims her dowry (*actio rei uxoriae*), and where the issue is who is at fault in the divorce. The declamation situations differ from the preceding since they do not involve divorce, but rather actual maltreatment in and of itself, usually with regard to children (but here of the wife). As Shackleton Bailey (1976) 200 observes: "The action *malae tractationis* should be brought by a wife when she has no other resource. Childless women have a different remedy—divorce. The law is for those who are tied to their wretched marriages by their children." In the husband's speech note the moderate and generous tone directed towards the wife, one which Q. (7.4.29) suggests is important in such cases; cf. H. (1972) 71.

supported the more merciful course of action (*humaniorem sententiam secuti sunt*; H. 38.13-14): for *sequor* in this sense see Sen. *C.* 7.8.10: *iudices illam sententiam secuti sunt*; cf. 9.3.10; *S.* 6.7; also Cic. *De Orat.* 3.5: *sententiamque . . . quam senatus frequens secutus est* (also *Cat.* 4.9; *Fam.* 10.13.1; Caes. *Civ.* 1.2.3). On *humanus* in the sense of "merciful" in a legal context (*OLD* s.v. 6 c) see esp. the frequent uses with *sententia* in Just. *Dig.* (e.g., 2.14.8.pr.5: *humanior sententia a praetore eligenda est*; cf. 21.1.23.9.1; 29.2.20.4.1; etc. [PHI CD ROM 1991]). The situation here is the conflict of contrary laws (see n. *ad* Calp. 51); in a somewhat sim. conflict (Sen. *C.* 1.5.3) there is a tie vote among the jurors between the options of death and marriage demanded by the two women plaintiffs; a declaimer then states: *inter pares sententias mitior vincat*; cf. W. n. 2 *ad* Sen. *C.* 2.3.3 (I, 270-271), with additional citation.

the other woman, + because she had submitted to a man, + (*illa + quod virgo perpessa est +*; H. 38.14-15): H.'s text. The passage is

troubled; cf. Winterfeld (1896) 190: "non ago de corruptissimis verbis *post factas nuptias* sqq., quae priusquam boni codices examinati erunt, vix potuerunt emendari . . . . " I have followed Schult.'s suggestion: *altera quod virum perpessa erat* ("the other woman, because she she had submitted to a man"); cf. Curt. 10.1.3: *virginesque et principes feminarum stupra perpessae corporum ludibria deflebant.* Burm. suggests *illa quod virgo compressa conceperat, peperit* ("that woman, because as a maiden she had conceived after having endured intercourse, gave birth"); as a parallel he cites Ter. *Ad.* 474-475: *virgo ex eo / compressu gravida factast*; cf. *TLL* s.v. *comprimo* 2157.70 (note the many citations to sim. situations in comedy); *OLD* s.v. 2. He favors the rather sim. *perpressa*, citing Ov. *Ars* 1.394: *perprime temptatam, nec nisi victor abi*; cf. *OLD* s.v. *perprimo.* Klotz further refines this with *quod stuprum virgo perpessa est* ("because the young woman had experienced sexual violation"). See H. (1972) 71 n. 6: "One does not expect to be informed about the reason for the *expositio*, but to get a defining explanation of *illa* . . . ." D.A. Russell's suggestion has more merit: *quae virgo compressa est.* He notes (*per litt.*). "The point seems to be that the child is the rapist's, she has had no other lover." The general sense is fairly clear, and I have preferred Schult. on the basis of the parallel of Curt. 10.1.3, although Klotz and Russell should not be dismissed.

of the other woman (*alterius*; H. 38.16): Obrecht; cf. Winterfeld 190 (incorrectly cited as p. 189 in the *app.* of L. & H., who both accept this reading); *alienus* (*codd.*).

a devoted wife . . . . (*venit ad vos pia mulier accusatura pietatem*; H. 38.18): *pia* C; cf. Schult., & esp. H. (1972) 71 (cf. *app.*), in preference to *prava* (BMN; Burm., L.); the latter lends the sent. no rhetorical point or attraction and must be an interpolation, whereas *pia* makes a nice play with *pietatem*, something that would certainly have appealed to an excerptor: as H. explains (ibid.): "The man is speaking about his own wife, who accuses him, and she had proved herself *pia* when choosing to marry him instead of letting him be killed; nevertheless she now accuses her husband's *pietas* against his son. *Pia mulier* suits very well the conciliatory terms in which the husband talks to and about his wife later . . . . If he appeals to his wife in such a way, it is very unlikely that he would begin his speech by calling her *prava mulier.*"

. . . to be abandoned to wild dogs and dreadful birds of prey (*infantem adhuc iussit feris canibus et diris alitibus exponi*; H. 38.18-19): note rep. of the *-is* & *-ibus* terminations; also the profusion of *s* sounds. The tone is pathetic and poetic.

I think he looked like his father (*puto, patris similis apparuit . . . . nam qui potest expositum praeterire? "ignoscere non potui."*; H. 38.19-21): note the allit. and profusion of *p*'s, also of *t*'s and *s*'s, likely to have been spat out by the speaker.

young lady (*puella*; H. 38.22): H. (*app.*) is a little puzzled by this, whether the man is referring to her when she was just a girl at the time of the rape, or he is calling her, now his wife, a *puella*. First, there is no difficulty calling a married woman a *puella*; e.g. Mart. 9.66.1. Even a woman 20 years old is so addressed (Octavia: Tac. *Ann.* 14.64; cf. Agrippina at age 24 in *Ann.* 14.2: *puellaribus annis* & Furneaux n. *ad loc.*); cf. Schult.; *OLD* s.v. *puella* 2. He could easily be looking back to his wife at the time she was unmarried ("you, when you were a girl"; cf. *virgo* [H. 38.14]) and he raped her; it was then that she showed compassion by opting for his life. This would, nevertheless, have not been too far back in the past (although declaimers could and did exaggerate time to suit their needs). Perhaps the point here is to emphasize her tender years, and the husband's view that, because of this (and perhaps because she was closer in age to the child), she should be more sympathetic to what he did.

he remembers (*meminit*; H. 38.22): the correct reading (BC; Burm.), *pace* Gronov. and L., who read *memini*—"an unattractive suggestion" (H. [1974] 64). H. does not mention Schult.'s ingenious proposal of *meminerit* ("let him remember nothing of his mother!"). Note the profusion of mournful *m*'s in the surrounding text (H. 38.21-23).

unfortunate boy, learn, yes learn . . . . (*disce, infelix puer, natalium tuorum, disce fortunam*; H. 38.23-39.1): pathetic appeal, strengthened by the repetition of *disce* and apostrophe to the boy; cf. Verg. *A.* 12.435-436: *disce, puer, virtutem ex me verumque laborem / fortunam ex aliis.* Nevelet, Pith., Schult., Weber 14, & L. are troubled by the passage, esp. *fortuna*, for which several possible changes and a transposition are offered. Nevelet & L. change the next sent.'s + *factum* into *fatum*, and place it after *tuorum* (see L. & H. *app.*). D.A. Russell, *per litt.*, makes an attractive suggestion: punctuate after *natalium* only, thereby understanding it as a gen. depending on *infelix* (cf. *OLD* s.v. 5 a): "learn, oh child unhappy in your birth, learn the fortunes of your family . . . ." Since the text makes eminent sense as it is, I have not chosen to follow these ingenious emendations. For *fortuna* in this sense see *OLD* s.v. 11.

one woman has distressed both of us alike, and another will alike save + <us in our distress> (*pariter nos ambos mulier afflixit et pariter*

+ *<afflictos> alia servabit*; H. 39.1-2): H. reads: . . . *et pariter* + *factum alia servabit.* There is considerable dispute about this text (as well as the preceding). First, *servabit* (Gronov., Schult., L.; H. somewhat guardedly) is preferable to *servavit* (BC; Burm.), and demanded in fact by the context. The husband is attempting to maintain a generous and conciliatory attitude towards his wife (remarked upon above, n. *ad* Calp. 51 & *ad* H. 38.18), hoping not just to win the case, but to win back her affections (or at least to give that appearance for the benefit of the jury). The future tense, then, anticipates this eventual reconciliation, as Gronov. well appreciated: "sic loquitur mitius iam agens cum uxore, quasi sperans ultro remissuram." What then to do with H.'s (following BC) +*factum* ? L., following Nevelet, places it, changed to *fatum*, after the preceding *tuorum* (H. 39.1); cf. Weber 14 & n. above *ad* H. 38.23-39.1, but esp. in a different light note Schult.'s comment: "Sensus tamen manifestius in his apparet, *& pariter factos alienos servabit.* Obtulit se etiam, *pariter forte nunc alienatos servabit.* His autem minatur, se hanc, nisi desisteret, derelicturum, cuius nunc teneatur matrimonio, & ad alterius, cuius e compressione hic illi erat natus filius, nuptias transiturum." Of the various solutions, H. seems closest to the mark in his *app.*: "*fort.* <af>flictum *vel tale quid.*" Why not then *<af>flict<os>*? This would preserve the parallel with the first statement, one meant to be striking as shown by the declaimer's pointed anaphora (cf. *disce*; H. 38.23–39.1) of *pariter* in both clauses; i.e., in the past the (other) woman has distressed both father and son by demanding the death penalty for him, and actually seeking to kill the son through exposure; the other (*alia*) will rescue them from their distress (as she had intially rescued him from the death penalty) in this way: she will drop the suit, and accept the child.

Declamation 52

On the barring of *infames* from the Roman military (a law not found in the other decl. collections) see Lanfranchi 459-460. Civil rights were curtailed for those who practiced certain kinds of vice; e.g., they were forbidden to address public assemblies; cf. Bonner 105 & nn. 5, 6, 7; Courtney n. *ad* Juv. 1.48. This is probably in accordance with the *Lex Julia Municipalis*; also barred were those who hired themselves out as gladiators or managed troops of gladiators (*lanistae*); see Greenidge 121 & nn. 2, 3, 4; cf. 162; see also n. *ad* Calp. 44; Bonner 105, 116, 124. On the legal status of gladiators see Lanfranchi 203-204, and esp. *DMin* 302; on the infamy of being a gladiator *MD* 9.21, 22. For a comprehensive discussion of the entire subject and esp. the legal restrictions placed on gladiators (also with reference to Calp. 52) see Ville 339-343; on equestrians and senators who went into the arena during the early Empire and the scandal attached to this see Ville 255-262 (cf. e.g., *DMin* 260.24). A somewhat sim. situation to Calp. 52 occurs in *MD* 9 where a young man is captured by pirates and is not ransomed by his father. He is then sold to the master of a troop of gladiators. His friend, the son of a poor man, comes to his rescue, but having insufficient money for the ransom, takes his place as a gladiator and is killed in the arena. The young man returns home where he openly supports his friend's father, but is disowned by his own father who is his enemy. Another case (*DMin* 302) deals tangentially with the subject here—the prohibition of gladiators from sitting in the first 14 rows of the theater. In the case at hand the former war hero / gladiator is formally called back to military service. He declines this on the grounds that he had been a gladiator and was *infamis* under the terms of the law, and thereby prohibited from serving. The *status* here, as in *DMin* 302 (esp. 302.1-3; cf. W. n. *ad* 302) is the definition of gladiator. Although he was granted his freedom from the arena, the hero maintains that he is still *infamis*, because he retains nevertheless the taint of his former profession (as in *DMin* 302, where the argument is developed more fully; cf. sim. Q. 3.6.18-19, dealing with actors). The real reason for the war hero's unwillingness to serve would seem to be his annoyance at the state for failing to ransom him from the pirates; his resentment is a notable component of the remarks in this decl. The excerpts presented are rather emotional, and this tone probably accounts for the elaborate style which contains many examples of apostrophe, rhetorical questions, word play, word repetition, allit., ellipsis, asyndeton, etc.

fell into the hands of pirates (*in piratas incidit*; H. 39.4): for *incido* with *in* & acc. see Calp. 48 (H. 36.20-37.1): *incidit in adversam valetudinem*. W. n. *ad DMin* 335.5 in regard to <*in*> *latrones incidi* (cf. 335 th.: *in latrones incidissent*) discusses the occurrences in the *DMin* of *incido* with and without *in*, followed by the acc.

the wooden sword of discharge (*rudem*; H. 39.6): cf. below, *post rudem* (H. 39.25). A wooden sword was presented to a gladiator to commemorate his formal discharge from the arena, most commonly after long and meritorious service; for detailed discussion of this procedure see Ville 325-329 (cf. 254, 277, 312 n. 198, 323, 370); Courtney n. *ad* Juv. 6.113; cf. Juv. 7.171. In our case we must assume a fair period of time had elapsed between his purchase and discharge; the brevity of expression is common in these themes.

officially summoned him to military service (*denuntiat militiam*; H. 39.6-7): sim. phrase occurs elsewhere only in Sen. *C*. 1.8.14 (& in a sim. context).

out of a war hero (*de viro forte*; H. 39.9): *forte*, uncommonly, for the more normal *forti*; on this substitution see *TLL* s.v. *fortis* 1145.49ff; *DMin* 278 tit. & W. n. *ad loc.*; cf. *DMin* 297 tit.; also Gel. 9.16.7. As W. observes, this form could be a sign of late authorship (although the title may not be original; cf. also W. [1984] XV n. 13); however similar occurrences are found in the MSS of Q. Perhaps we have an early interpolation of *viro*, with *forte* originally as an abl. substantive standing alone and balancing the preceding sim. *libero*. Less likely, but within the realm of possibility in decl. is an intended double meaning, or mistake by a scribe, since *forte* here in the text could also mean "by chance" and reflect the previous *fortuna* (H. 39.8). The sentence refers to the vicissitudes of fortune, a frequently occurring commonplace in decl.; cf. below (H. 39.22- 24); Bonner 61.

because as a gladiator, in an official state of disgrace, I speak in court (*quod gladiator infamis in iudicio loquor*; H. 39.12): along with the loss of civil rights as an *infamis*, he should not be allowed to conduct a case in court (see n. *ad* Calp. 52)—i.e., in his view he still retains the taint of being a gladiator and is thus apologizing for his appearance. One wonders then why he really does appear and does not have a *patronus* conduct his case; see *DMin* 302; Bonner 52-53. But of course in decl. we must not hold too closely to strict legal procedure, and, in any event, a declaimer would be attracted to speaking in the *persona* of the war hero / gladiator for its dramatic possibilities, so well explored even in these short excerpts; cf. *MD* 9.

I made a mistake . . . I made a mistake (*erravi . . . erravi*; H. 39.12-13): repetition of the same verb for emphasis (cf. e.g. Sen. *C.* 9.5.3: *erras*; also *disce* in the previous decl.; H. 38.23-39.1). This decl. is uniquely characterized by repetition of words in exactly the same form, or in grammatical variations: *negat* (39.19), *fecit* (39.23-24; also *facimus* 39.23), *contemnere . . . contemno* (39.18); also *tu* (39.16-17—three times), *sola* (39.16-17), *gladiatorem* (39.18-19), *quicquam* (39.21), *fortunae . . . fortunam . . . fortuna* (29.22-23; see also n. *ad loc.*).

immortality consisted of dying for the state (*immortalitatem esse pro re publica mori*; H. 39.13-14): cf. Hor. *Carm.* 3.2.13: *dulce et decorum est pro patria mori*; also Cic. *Planc.* 90: *nam, qui pro republica vitam dediderunt . . . numquam mehercule eos mortem potius quam immortalitatem adsecutos putavi.*

but my country—not a corsair (*non pirata, sed patria*; H. 39.15): i.e., by failing to ransom him. Note the clever word play (*paronomasia*) by which *pirata*, through letter transposition (*transferendis litteris*), becomes *patria*; on this type of play see *Her.* 4.29 & Caplan n. h *ad loc.* (p. 301).

but, oh my courage . . . . (*sed, o virtus, in adversis comes, sola tu me secuta in carcerem, tu in ludum, virum fortem tu sola non decipis*; H. 39.15-17): notable repetitions (see n. *ad* H. 39.12-13), ellipsis, asyndeton, unusual apostrophe to *virtus*; play on *virtus . . . virum.*

you know that I disregard danger, but disgrace I do not disregard (*scitis me . . . periculum contemnere, sed non contemno flagitium*; H. 39.17-18): chiasmus; play on *contemnere* (n. *ad* 39.12-13). He seems to be using the powerful *flagitium* in the general sense of the more technical legal term *infamia*; i.e., he was a hero and despised danger; but he cannot overlook the disgrace incurred by serving as a gladiator.

well then, does anyone . . . . (*utrum igitur gladiatorem negat [negat] aliquis infamem, an <me> negat gladiatorem*?; H. 39.18-19): the MSS & L. have *virum*; *utrum* sugg. by Gronov., followed by Schult., Obrecht, & H. The doubled *negat* is rejected by Pith., L., H; cf. L. & H. *app.* I have followed Gronov., Schult., & L. in adding <*me*> as necessary to the sense; H. is less sure and relegates this suggestion to the *app.* This entire interpretation of a somewhat confusing sent. follows Schult.

for neither is any rank in the common masses lower than my status as a gladiator . . . . (*neque enim condicione gladiatoria quicquam*

est humilius in vulgo nec meo nomine quicquam nobilius in ludo; H. 39.20-21): note the studied parallelism here, esp. the rhyming prep. phrases ending both clauses; powerful contrast of *humilius* & *nobilius*, and their attendant abls. of comparison. Cf. Cic. *Phil.* 6.3: *quae vobis potest cum hoc gladiatore condicionis, aequitatis, legationis esse communitas*?; *Fam.* 12.22.1; *SHA* Ant. Phil. 19.7-8.

"this was your bad luck." how long shall we make luck answerable for human affairs? so be it. . . . (*"fortunae . . . fuit." quousque fortunam facimus humanorum negotiorum ream? esto; fortuna fecit ut caperer. quis fecit ut nemo rediret?*; H. 39.22-24): note the allit. of *f*; also word repetitions—forms of *facio, fortuna* (see n. *ad* H. 39.12-13); the repetition of *fortuna* in three different cases is a striking example of *adnominatio* (Greek *polyptoton*; see *Her.* 4.31; Bonner 154 & n. 4, 155). Perhaps *deam* for *ream*; cf. Juv. 10.365-366: . . . *nos te, / nos facimus, Fortuna, deam caeloque locamus*; see Burm. (& Heinsius). Cf. Ferguson's comments (n. *ad loc.*) on Juv.'s attack on *Fortuna* here; also Courtney's (n. *ad loc.*) citations e.g. of Juv. 13.86; Plin. *Nat.* 2.22, but esp. Publil. Syr. 153: *ex hominum questu facta Fortuna est dea* (for other parallels see Mayor n. *ad loc.*).

Declamation 53

On the rich man vs. poor man theme see n. *ad* Calp. 6 (H. 6.13); on adoption see n. *ad* Calp. 11; on the law which allows fathers to kill children without a trial see n. *ad* Calp. 24; on the requirement to present one's case for suicide before the senate see n. *ad* Calp. 20. A very sim. situation occurs in Calp. 11 where we also have reconciled rich and poor enemies; in that case the rich man just adopts the three sons of the poor man, killing one caught in adultery, the second for aspiring to tyranny; the poor man then seeks the third son back into his custody, and is opposed by the rich man. Obviously, it would appear that the rich man feigned reconciliation in both instances to get control of the poor man's son(s), through whom he could then get his revenge against the poor man. In this case the rich man's natural son, adopted by the poor man, desires suicide as a way to prevent execution by the vengeful poor man, which in itself would be a painful process. In addition, the poor man could possibly trump up charges (as perhaps in Calp. 11) which would bring dishonor upon him; possibly also, the young man desires to focus attention on the intent of the poor man in the hope that he may somehow forestall the entire process of either execution or suicide. The poor man, whose case is represented here, argues that he has kept his part of the bargain, is motivated by friendship (*amicitia*; H. 40.9), and loves his adopted son, even though he is not the biological father (H. 40.9-10).

gentlemen of the senate, how I wish . . . . (*utinam, P. C., liberis nostris exire de vita nisi nobis arbitris non liceret!*; H. 40.6-7): the poor man is contrasting his wish (supposedly) to preserve his adopted son with the rich man's execution of his natural son; i.e., if it is up to him, neither son would die. *Arbitris* here apparently refers to the father's status as judge under the terms of the *lex indemnatorum.*

this is a totally undeserved fate if . . . . (*perquam indignum est si utrumque pignus amittam, et quod dedit aliquando natura et quod nunc substituit amicitia*; H. 40.7-9): cf. Calp. 46 (H. 36.11): *perquam es inhumana*; these are the only two instances of *perquam* in decl. *Pignus* here is a strong term (cf. n. *ad* Calp. 23 [H. 22.7-9]), used in the sense of the sons as guarantee tokens of the reconciliation between the rich man and poor man. For *natura* in very sim. contexts see Calp. 38 (H. 32.4-5): *natura mihi tres liberos dedit, fortunaque duos sustulit*; also Calp. 39 (H. 32.14- 15): *hoc nomen, quod natura dedit, fortuna non abstulit*; cf. also in the context of adoption Calp. 30 (H. 28.2): *adoptio sancta res est, quidni, quae beneficia naturae et iuris imitatur.* Note

the parallel structure of the second half of the sentence, with the coupled *et quod* clauses, and the contrasting pairs *aliquando* & *nunc*; *natura* & *amicitia*. The poor man is also attempting to win sympathy by portraying himself as a man who will have lost both of his sons.

whom I did not father of my own seed, but whom I acquired in the agreement (*quem non genui meo sanguine, sed redemi*; H. 40.9-10): the poor man loves his adopted son through his own free choice, not because of his duty as a father by blood relationship. *Redemi* indicates that the exchange of sons was a formal guarantee of friendship and reconciliation (cf. above, *pignus* [H. 40.7] & n. *ad* H. 40.7-9); see *OLD* s.v. *redimo* 4; L&S s.v. II B, 1. *Codd.*, Burm., Schult. have *quem*; L. replaces with *quia*, but H., who returns to *quem*, notes (*app.*) that L. falsely attributes *quia* to C.

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The works listed below are those used specifically in the preparation of this book. Except as noted under *Abbreviations and References,* the works here are referred to by the author's last name, or last name and year in the case of multiple entries. On occasion I have supplied a full reference to the work in the notes where this helps to make a point or would be more informative to the reader. Abbreviations of journal titles follow the style of *L'Année philologique.* For the full (and critical) bibliography on Roman declamation see the following: L. Sussman, "The Elder Seneca and Declamation Since 1900: A Bibliography," in H. Temporini & W. Haase (eds.), *Aufstieg und Niedergang der römischen Welt* II, 32.1 (Berlin & New York 1984) 557-577, and in the same series, L. Håkanson, "Die quintilianischen Deklamationen in der neueren Forschung," II, 32.4 (1986) 2272-2306.

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ABBREVIATIONS AND REFERENCES

References to Calpurnius Flaccus are by declamation number, accompanied by the page and line reference to Håkanson's (= H.) edition (Stuttgart 1978); thus the reference Calp. 3 (H. 3.9) means the 3rd declamation, page 3, line 10 of Håkanson's edition. (On a few occasions where there are many references in a row, I have just used the H. notation.) At times I will refer simply to his *apparatus criticus* (*app.*) or index; when citing his introduction I will use the full form of his initial and date; e.g., H. (1978) X. References to the *Major Declamations Ascribed to Quntilian* (*Declamationes Maiores = MD)* are by declamation number and section, except on occasion where more precision is needed (since the sections tend to be very long); in these instances I have added in parentheses the page and line reference to Håkanson's edition (Stuttgart 1982). The *Minor Declamations Ascribed to Quintilian* (*Declamationes Minores = DMin)* are referred to by declamation number and section of Winterbottom's (= W.) edition (Berlin & New York 1984); cf. Shackleton Bailey (Stuttgart 1989). I have often referred the reader interested in further detailed discussion of a point to W.'s excellent and very full commentary in his edition. I have used the following method in so doing: n. *ad DMin* 335 means W.'s introductory discussion (as on p. 518); n. *ad DMin* 335 tit. refers to his discussion of the title (here, *in novercam,* p. 519); n. *ad* 335 th. means his discussion of the theme; n. *ad* 315.3 means his notes to section 3 (at times, when there are many items glossed in the note to a particular section, I will further specify; e.g., W. n. *ad loc. fugientem DMin* 335.3). At times when I refer to other parts of this edition I will use the date notation also; e.g., cf. W. (1984) 598. In referring to my notes to the *MD* I will simply say, see Sussman, n. 1 *ad MD* 3 (= my introductory n. to this decl.) or n. 3 *ad MD* 3.13 (p. 247).

With the exceptions noted in the section below, citations of Latin authors and works generally conform to the system in the *Oxford Latin Dictionary* (Oxford 1968-1982); Greek authors to the *Oxford Classical Dictionary* (2nd ed., Oxford 1970). The Roman legal writers and the Bible (e.g., the Vulgate) are usually given in the reference form of the Packard Humanities Institute CD ROM (1991). Sigla used in the text follow the standard practices of classical texts.

Since many of the readers referring to this work will also be using Winterbottom's commentary on the *DMin,* I have for the most part tried to make my citation methodology consistent with his.

Abbreviations

DMin = *Minor Declamations*
Her. = *Rhetorica ad Herennium*
MD = *Major Declamations*
Quintilian = *Q.*
RLM = K. Halm (ed.) *Rhetores Latini Minores* (Leipzig 1863), p. & line
Sen. *C.*, *S.*, *Exc.* = the elder Seneca, *Controversiae,* the *Suasoriae,* the *Excerpta* (I have at times for ease of location also appended the page and line reference to Håkanson's edition [Leipzig 1989]).
Spengel = L. Spengel (ed.), *Rhetores Graeci* (1853-1866), vol., p., line.
Walz = C. Walz (ed.), *Rhetores Graeci,* vol., p., line.

Scholars

Burm. = Burman, editor of the Leiden 1720 ed.
Gronov. = Gronovius, *apud* Burm. (n. *ad loc.* understood); also Francius, Obrecht, and Schult. (= Schultingh)
H. = Håkanson
W. = Winterbottom

Other Modern Works

Bonner = S. F. Bonner *Roman Declamation* (Liverpool 1949, repr. 1969)
G&L = B. L. Gildersleeve & G. Lodge, *Gildersleeve's Latin Grammar* (3rd ed. rev., London 1895, repr. 1965)
L&S = C. T. Lewis & C. Short, *A Latin Dictionary* (Oxford 1879)
P-W = *Paulys Real-Encyclopaedie der classischen Altertumswissenschaft*
OCD = *The Oxford Classical Dictionary* (2nd ed., Oxford 1970).
OLD = *Oxford Latin Dictionary* (Oxford 1968-1982)
TLL = *Thesaurus Linguae Latinae* (Leipzig 1900-)
Weber = H. Weber (1898)

I have often referred just to the *OLD* in discussing the meaning and use of a word in simpler, more easily defined situations, since it is more widely available and is easier to use than the *TLL,* which in any case does not exist yet after the letter p. Also the availability of newer and much improved texts (& esp. of Calp., elder Seneca,, *MD* & *DMin)*

and computer technology (e.g., PHI CD ROM 1991) makes use of the older *TLL* volumes sometimes unfruitful and confusing.

Citations of modern works will be by author's last name, with the year added in the case of multiple works, as found in the bibliography. I am greatly indebted to D.A. Russell, who read the finished manuscript of this book and made numerous helpful suggestions in a long letter. I have adopted most of these, and usually indicated my debt by referring to him, *per litt.* At times I have disagreed, and I claim the full the burden of accountability for the finished product for which he is, of course, in no way responsible.

Index to the Commentary

References are generally for substantial discussion of a term and are not intended to be exhaustive. For inclusive references to Latin words refer to H.'s Index Verborum.

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